



# The Future Conditions for the Åland Autonomy

A study of the legal and political  
development of Åland's self-determination

Bjarne Lindström  
Göran Lindholm

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by

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the promotion of historical research on Åland*



## Foreword

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## Foreword

At the end of 2018, the governing board of Olof M. Jansson's Foundation initiated a research project that focused on the development of the Åland autonomy's constitutional status and scope for action during the century since its introduction in the early 1920s. The theme is suited to the foundation's purpose and emphasis on research into topics relating to the development of today's Åland society. This includes thorough historical knowledge of the autonomy's constitutional and political prerequisites, which should be used to increase the possibilities to develop Åland's self-determination in today's legally complicated and politically challenging Finnish and European context.

The project's first report (OMJ 1/2020), ***Att sätta självstyrelsens gränser*** (*To set the boundaries of home rule*), focused on the legislative control and its importance in the interpretation of the Åland autonomy's boundaries. The report, written by *Ida Jansson* in co-operation with *Göran Lindholm* och *Bjarne Lindström*, is published (in Swedish) on the foundation's website ([www.olofmjanssonsstiftelse.ax](http://www.olofmjanssonsstiftelse.ax)).

An analysis of the report's implications for the scope of the autonomy's competence - ***I gränslandet mellan juridik och politik: Högsta domstolen och den åländska lagstiftningsprocessen*** (*In the borderland between law and politics: The Supreme Court and the Åland legislative process*) - written by *Ida Jansson* and *Bjarne Lindström*, has also been published in the anthology issued by the Åland Islands Peace Institute, with the title ***Styr ålänningarna sitt öde? Demokratiperspektiv på Åland*** (*Do the Ålanders control their fate? Democracy perspectives in Åland*).

The project's second report (OMJ 2/2020), ***De legala och politiska förutsättningarna för Europas autonomier*** (*The legal and political conditions for Europe's autonomies*), described and analysed six European and Nordic autonomies similar to Åland. The report, written by *Bjarne Lindström*, focused on a comparative analysis of how the legal arrangements of these six autonomies and the partnerships with their respective states have affected the conditions for their self-determination and scope for action. This report (in Swedish) is also available on the foundation's website.

The project's final report (OMJ 3/2021), ***Den åländska autonomins framtidsförutsättningar: En studie av självbestämmandets legala och politiska utveckling*** (*The Future Conditions for the Åland Autonomy: A study of the legal and political development of Åland's self-determination*) was published in the spring of 2021. In order to make the report available to an international audience with a general interest in regional autonomies and, more specifically, in the Åland autonomy, the foundation's governing board decided to have the report translated into English, with this publication (OMJ 4/2021) being the result. The English-language version of the project's final report can be downloaded from the foundation's website. It can also be ordered in printed format from the foundation.

The report's purpose is to, based on the results of the foundation's two preceding research reports, provide a more thorough knowledge-base of the possibilities for the Åland "autonomy model" to develop according to the ambitions that originally lay behind its establishment. Unlike many other studies of the Åland autonomy, this report takes a holistic approach - including the formal (juridical/legal) as well as the actual (effective/political) scope for action - to the potential development of the autonomy according to its underlying purpose. The report's international comparison of autonomies contributes to this holistic approach and the conclusions that can be made regarding the autonomy's legal and political position, and the need for reform that this creates.

The report is written by two researchers with different but complementary areas of expertise: the Åland Autonomy Act and international law (*Göran Lindholm*) on the one hand, and international autonomy development and regional research (*Bjarne Lindström*) on the other. The two authors' academic and professional backgrounds are reflected in their contributions to the report. *Lindholm* had primary responsibility for those parts of the report that concerned the autonomy's international background and development to the present day (chapters 3-5). He also had responsibility for the report's more concrete recommendations regarding reform and policy (chapter 10). *Lindström* had primary responsibility for the study's research-based background, research questions and method (chapter 2), the international comparisons (chapters 6 and 7), and the conclusions regarding the Åland autonomy's effective scope for action and developmental potential (chapters 8 and 9). He has also had overall editorial responsibility for the report.

The authors have been assisted in the writing of this report by a 15-person strong expert group, providing important insights into the Åland autonomy's legal contents and international background, and its effective scope for action in interacting with the Finnish state's political and administrative representatives. The expert group includes researchers in international law, as well as politicians and officials who are responsible for autonomy issues in their everyday work, both in Åland and in Finland. The group's researchers include people who belong to academic environments both within and beyond Åland/Finland. The expert group includes politicians with extensive experience from the five largest Åland parliamentary parties.

The expert group's opinions and suggestions have played a decisive role in the report's contents and quality. However, as is customary, the authors take full responsibility for any possible remaining errors. As each individual member of the group has contributed anonymously with comments and suggestions, the authors and the foundation must thank the group as a whole, none named and none forgotten.

This report ends the research initiated by Olof M. Jansson's Foundation into the Åland autonomy's current position in an historical and international perspective. The foundation's hope is that the report will contribute to a deeper and, perhaps more than anything, broader



knowledge of the Åland autonomy's conditions for development and need of reform a century after its establishment. Finally, the governing board would like to express its sincere gratitude to *Bjarne Lindström*, whose comprehensive research experience has contributed greatly to this project and to the accomplishment of the governing board's ambition to collect and publish in-depth knowledge to support the continued development of the Åland autonomy.

*Göran Lindholm*

Chairman

Olof M. Jansson's Foundation for the promotion of historical research on Åland



# 1. Summary

The Åland autonomy was launched in the early 1920s against the background of the international negotiations that led to Finland obtaining sovereignty over the islands in return for guaranteeing the islanders' Swedish-speaking identity. Åland received a degree of self-determination that, according to the Finnish Government of the time, would be as far-reaching as possible - without overstepping the critical boundary toward state formation.

## Background and research strategy

A century has passed since the autonomy was established. The original Autonomy Act regulating the extent of the Ålanders' home rule and the conditions for its development has been revised and updated twice (1951 and 1991), and a fourth version of the Act has been under preparation since 2010. There should be, in other words, sufficient material for a closer examination of how the original intentions regarding language guarantees and the broadest possible form of autonomy have been realised.

During recent decades several analyses of the Åland - or perhaps, more correctly, the Finnish - autonomy model's status and development have been published. These tend to focus on the autonomy as defined by international law, and on its constitutional background, i.e. on its formal *de jure* conditions. They have often been of high quality and have contributed to improved knowledge of the autonomy's legal and constitutional position.

An equivalent scrutinisation of the other important ingredient of a well-functioning autonomy - the *de facto* scope for action - has not been so forthcoming. A thorough, more comprehensive, assessment of the Åland autonomy model's actual ability to deliver relative to its original intentions requires both these types of study. An analysis of the Åland autonomy's scope for action has therefore a meaningful role to play alongside studies focusing on judicial and constitutional questions.

## Purpose and research questions

The ambition motivating this report is to contribute to a broader understanding of the Åland autonomy model's legal and political position, as well as defining the potential for development that this provides within the framework of the Finnish state. Which legal instruments and real possibilities does Åland possess to, if necessary, guarantee a societal development that diverges from that of wider Finnish society? In which respects does the present autonomy model fail, and where are its strengths?

In order to examine the autonomy's sustainability relative to the original ambition of greatest possible self-determination, this study will include an analysis of the Åland autonomy model's strengths and status in comparison with a number of similar European and Nordic autonomous regions. Against the background of the report's conclusions, the question is posed as to which reforms are necessary to guarantee a future development of home rule in line with the autonomy's original intentions and underlying goals.

## Results and conclusions

The report shows that the Åland autonomy's background in international law, together with its constitutional position, have always been its strength. This is confirmed in an international perspective, where the equivalent strength of the Åland autonomy's legal guarantee is often lacking in other autonomies, including those with considerably greater *de facto* political manoeuvrability and self-determination than Åland. Even if this study raises a number of questions regarding the development of the autonomy's constitutional position during recent decades, this aspect of the autonomy must be seen as internationally competitive.

Regarding the autonomy's *de facto* strength and scope, this report points in another direction. A recurring conclusion is that the autonomy's political and administrative potential is considerably more limited than its constitutional position provides scope for. The Åland autonomy tends to deliver a lesser degree of home rule than its legal set-up implies, and, paradoxically, less flexibility and scope for action than a number of European autonomies with a weaker constitutional position than Åland.

The explanation of this paradox can be summarised in two critically important weaknesses in the Åland autonomy model, namely:

- The autonomy's limited legislative competence
- The asymmetrical partnership with the Finnish state

The report's comparative analyses show that the autonomy's actual content and scope for action is less comprehensive than that of a number of similar regional autonomies in Europe, in particular the Nordic sister-autonomies of the Faroe Islands and Greenland. The limit to home rule is not only restricted to the area of competence. The problem concerns, above all, a deficient competence within fundamental areas of law, which in practice tends to reduce the scope of action even within those areas of law where Åland is the competent legislator.

The conclusion is that Åland has some distance to go to achieve the original goal of "greatest possible home rule". Another conclusion is that Åland's limited legislative competence also makes it difficult, in the long-run, to guarantee the autonomy's overriding goal regarding the Swedish language.

The other weakness is the unequal partnership between the autonomy and the Finnish state. The asymmetric balance of power manifests itself in how the limits of home rule are interpreted, as well as in the more long-term development of the autonomy. In both cases the Finnish state has what can be called the legal and political interpretative prerogative - something that clearly has had a limiting effect on the autonomy's development and extent. Additionally, an aggravating factor in the partnership is the growing language barrier (Finnish/Swedish) between the two partners.

The report's comparative analyses show that a more equal and bilaterally defined partnership between an autonomy and the state tends to create better conditions for co-operation, and contributes to a more flexible and more dynamic development of autonomy.

## **Recommended measures within the framework of the current Autonomy Act**

In anticipation of a reform that gives Åland the competences necessary to develop the autonomy in accordance with its original purpose, this report proposes a number of legal and political measures that can be implemented within the framework of the present Autonomy Act. Without ranking in regard to their importance for the autonomy's development or the political and economic implementation requirements, the various measures are summarised below.

### *The partnership with the state*

One of the report's most important conclusions is that the partnership with the state needs to be strengthened. Therefore, it is recommended that the autonomy initiates a high-level co-operation between Finland's president and the Åland Parliament's speaker. Similar types of bilateral relations are recommended for co-operation between the two concerned administrations (permanent secretary - state secretary, head of department - head of administration, etc.).

### *Strengthening areas of competence according to the present Autonomy Act*

The present Autonomy Act includes a so-called B-list with six areas of law that can be adopted through simple legislative procedures. These are population registration, trade-, association-, and ship-registers, pension schemes for municipal employees, alcohol legislation, banking and credit sectors, and employment contracts. The possibility to assume competence in these areas has not been exploited, a passivity on the part of Åland that has hardly benefited the autonomy's development. While waiting for a more thorough renewal of the Autonomy Act it is suggested that the now 40-year-old B-list is re-examined based on present requirements and possibilities.

### *Reducing competence drain*

One of the great weaknesses of the present autonomy is, as stated above, the limited competence within several legal and political areas. This has led to a comprehensive copying of Finnish legislation, which, in the long run, has tended to limit the scope for action within the autonomy's own areas of competence. While waiting for a reform that gives greater legal competence within these important areas, it is recommended that the Åland Parliament limits the commonplace copying of state legislation. Further, the established acceptance of state competences that have impinged on Åland competences, as defined by the Autonomy Act, should be questioned to a greater degree.

### *Increased international presence*

The general recommendation is to increase the level of visibility in the international arena, with special emphasis on a presence in Brussels and Stockholm. With regard to Brussels and Åland's EU status it is recommended that the autonomy raises its political profile and (via Finland) demands increased participation in relevant parts of the preparatory work within the commission and its various bodies. The autonomy must clearly assert its role in the Finnish EU commission, not least in monitoring how Åland's areas of competence are handled in EU

directives. Furthermore, Åland should question the interpretation that the transposition of EU legislation/regulation to national legislation represents foreign policy.

With regard to other areas of international co-operation it is recommended that a routine be established providing regular updates from the Finnish foreign office on current negotiations and where specific reference is made to Åland in respective proceedings. Finally, it is suggested that Åland and the autonomy raise their international visibility through increased participation in international bodies that are not reserved for sovereign states.

#### *Increased co-operation with Sweden*

In order to secure the long-term status of the Swedish language in Åland in an ever more unilingual (Finnish) Finland, it is recommended that co-operation with Sweden is increased with the purpose of guaranteeing access to education in Swedish and, in general, facilitating an unhindered cross-border co-operation. This should be possible through a bilateral agreement (approved by Finland) between Åland and Sweden. A closer relationship to the Swedish preparation of EU legislation is also recommended in order to increase the possibility for the Åland administration to receive relevant reference material in Swedish.

#### *Skills and competence advancement*

The growing demands of maintaining and developing the autonomy require a qualified level of expertise within the autonomy's administration, as well as specialist knowledge of international law and relations. This report therefore recommends a specific focus on courses and research regarding the Åland autonomy's scope for action and conditions for development in an international perspective, either arranged by the Åland Islands Peace Institute or by the Åland University of Applied Sciences.

### **Recommendations regarding the future renewal of the autonomy**

The Åland autonomy is in great need of renewal. This is especially true of the limited competence within the areas of law and politics so vital to the autonomy's future development. Without a deeper structural reform the autonomy risks stagnation and distancing from its original purpose.

This insight was the key idea behind the suggestion to reform the present Autonomy Act, which was initiated by Åland more than ten years ago. The most significant component in the reform proposal was, with reference to the Danish model of autonomy, the introduction of a new form of division of competences, in which all areas of law - with the exception of those that can be tied to national sovereignty's most fundamental conditions (prerogatives) - can be transferred to the autonomy's jurisdiction without changes to the Autonomy Act. However, most of the reform proposals were rejected by the Finnish state in the following political process. The path to a more fundamental renewal of the autonomy is therefore, at least in the short-term perspective, closed.

If the reform had been implemented with respect to Åland's wishes, many of the problems identified in this report would, if not totally disappear, at least be significantly reduced. Therefore, the report's single most important recommendation is that negotiations are

reopened, as soon as possible, with representatives of the Finnish state regarding the need for a comprehensive reform with respect to transferral of competence.

The report recommends a particular focus on the following areas in the event of a more thorough, future reform of the Åland/Finnish autonomy model, namely the need for:

- Increased competence within areas of law central to the development of Åland society
- Competence in areas of taxation and improved economic-political manoeuvrability
- Increased international competence and better functioning language and nationality guarantees
- A clearer relationship between the Åland Autonomy Act and Finnish constitutional law
- More equal legislative control
- Increased influence for the bilateral (Åland-Finland) “Åland Delegation”

### **From home rule to home management?**

The analyses that have been conducted in connection with the writing of this report point unequivocally to the conclusion that the time is ripe for a comprehensive reform of the Autonomy Act. Without such a structural reform we risk a situation where Åland’s legal and political manoeuvrability is gradually eroded, and that the Åland autonomy will accordingly adopt the character of a home-ruled administration rather than a qualified regional autonomy.

## 2. Introduction: State integration v. regional autonomy

The Åland autonomy<sup>1</sup> is often described as especially far-reaching and generous in terms of legislative rights and political manoeuvrability. The general view is that Finland has given the Ålanders a - in comparison with equivalent autonomies - significant measure of self-determination.<sup>2</sup>

The autonomy's establishment as a consequence of the conflict regarding sovereignty over Åland and through the decision in the League of Nations (the predecessor to today's United Nations) in 1921, as well as the fact that the islands constitute a demilitarised and neutralised zone, has further strengthened the interpretation of Åland as an unusually comprehensive autonomy.<sup>3</sup> Therefore, it does not come as a surprise that research into Åland's autonomy often refers to its international background, as well as the consequences of the islands' demilitarisation and neutralisation. In the former case focus has been mainly on the so-called Åland model as an example of a successful solution to an international border conflict (here between Sweden and Finland).<sup>4</sup> In the latter case focus lies on the contribution of Åland's demilitarised status to decreasing tension and improving international relations in terms of political security within the Baltic Sea region.<sup>5</sup>

Research into the Åland autonomy and its development have accordingly focused on the autonomy's international background and foundation in international law. A critical analysis of the Åland autonomy's *de facto* scope for action (as opposed to the more formal *de jure* preconditions) is not as common. The tendency to see the autonomy as a successful political construction for all parties involved (Åland, Finland/Sweden and members of the international community) has contributed to the low frequency of critical analyses of the autonomy's long-term sustainability and developmental potential.<sup>6</sup>

### State pressure for integration

The Åland autonomy's legal<sup>7</sup> and political core is primarily concerned with guaranteeing the archipelago's identity as a, within Finland, culturally divergent Swedish-speaking region. The preservation of the language status is a central theme in the treatment of "the Åland Islands

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<sup>1</sup> In this report autonomy and home rule are in all essential respects synonymous. This also includes the words regional and territorial in the terms "regional autonomy/home rule" respectively "territorial autonomy/home rule".

<sup>2</sup> See e.g. Loughlin & Daftary (1999), Joenniemi (2014), Paci (2020).

<sup>3</sup> See e.g. Ministry for Foreign Affairs (2001), Suksi (2013) and Spiliopoulou Åkermark (2011). For a more comprehensive picture of the Åland autonomy's constitutional position and legal setup, see Suksi (2005).

<sup>4</sup> A representative example is the report from a seminar in Geneva on Åland as an example of international conflict management, see Government of Åland (2002).

<sup>5</sup> See e.g. Eriksson et al (2006), Utrikesministeriet (2010) and Spiliopoulou Åkermark et al (2018).

<sup>6</sup> For exceptions that to a varying degree discuss the limits in the autonomy's position and scope for action, see i.a. Lindström (1997; 2001), Bring (2002), Roslin (2006), Ackrén & Lindström (2012), Palmer (2021). Cf. also Ålands Lagting (2010).

<sup>7</sup> The word "legal" is used as a collective term for the various autonomy arrangements (and their competences) that are based on - or are expressed through - a formal legislative process. It is not used as the opposite of "illegal".



Question” in the League of Nations and the bilateral Åland Agreement (between Finland and Sweden), as well as in the texts defining the goals of the successive Autonomy Acts; something that is made clear in the following chapters.

In addition, when the first Autonomy Act was introduced, the Åland territory’s divergent political status was clarified by the state in the form of a declaration of intent, which guaranteed that Åland (through its autonomy) would receive as broad a political and legal scope for action as possible without passing the critical boundary to creation of an own state.<sup>8</sup> The newly established Finnish state’s ambitions for the extent of the Åland autonomy were thereby high, at least officially.

It is not possible, however, to ignore the fact that the Finnish state, like all other sovereign states, is the bearer of a long-term integration project whose developmental logic creates an underlying pressure toward economic, social and communication standardisation of its territory, including Åland. Since the modern state was formed in the mid-1800s<sup>9</sup> history has demonstrated that a successful process of state formation is dependent on an effective exercising of political power founded on three critically important, territorially based integration processes.<sup>10</sup>

The first of these three integration-generating building-blocks of the modern state is basically unlimited political power over a clearly delimited territory. This could be called the *territorial sovereignty condition* of state building. It is essential to note that the sovereignty condition applies to a co-existence of politics and territory that is of critical importance for maintaining state power. All forms of state sovereignty known today require a combination of political power and geographically delimited territories. Consequently, one of the most fundamental building blocks of the modern state is its exercise of political (and military) power in a territory controlled by the state itself.<sup>11</sup>

The second cornerstone of successful state formation is the standardisation of general means of communication within the state’s territory, in practice a common spoken and written language<sup>12</sup>. This is the fundamental *communication condition* of the modern state. The traditional model is the unitary state with a well-integrated territory and a population whose

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<sup>8</sup> In the introductory description of the background to the proposition for the first Åland Autonomy Act, the Finnish Government emphasises that the law’s intention is that ”(...) the Ålanders [shall] be ensured the possibilities to themselves arrange their existence as freely as possible for a region that does not constitute an independent state.” (Regeringens proposition 1919, p. 2).

<sup>9</sup> A comprehensive examination and analysis of the academic literature on the process of European state formation can be found in Hroch (2015). For the very long-term historical perspective on the establishment of states in our part of the world, see Tilly (1993).

<sup>10</sup> The presentation below of the fundamental building blocks of the logic of state integration is a summary of the equivalent analysis in Lindström (2019).

<sup>11</sup> Jones (1999) has therefore defined the roots of the modern state in the development of medieval kingship toward an ever clearer “territorialisation” of its power. Note here the unproportionally large importance that the UK placed on the control of its territorial waters during the final negotiations regarding Brexit. The income from this part of the UK’s territory represents less than 0.1 % of the British economy (Warren & Wishart 2020).

<sup>12</sup> Fairclough (1989, p. 21) states that “modern armies and navies are a feature of the ‘nation state’, and so too is the linguistic standardization of large politically defined territories which makes talk of ‘English’ and ‘German’ meaningful”.

internal communication is dominated by a language that the majority of its citizens understand and can easily use in their everyday lives and work.<sup>13</sup>

This concerns not only the language as one of a number of communication techniques. Language standardisation also results in a common “cultural code”<sup>14</sup> with commonly accepted social patterns of behaviour and ways to communicate required for a well-integrated modern society. The unified standard of communication is at the same time a condition for a functioning internal division of labour and an integrated labour market, something which presupposes a dominant language that is used and understood throughout the territory.<sup>15</sup>

The third cornerstone in the development of the modern state could be characterised as the *domestic market condition*. State policies and national economic legislation have resulted in geographically delimited markets for labour, goods and services, which in practice promote internal economic integration rather than international interaction. One of the main tasks of the state borders is thus to create and delimit an integrated arena for entrepreneurship, production and business. Accordingly, the state borders have significant economic and social protective effects, which is true also for states with close cultural, linguistic and economic ties, for example in the Nordic region and the European Union.<sup>16</sup>

These three cornerstones of state power are closely related, if not inseparably interwoven. In practice, the state’s political legitimacy rests on a well-functioning interaction between them. Without a territorially well-established exercise of power it is impossible to standardise a dominant form of communication (the language and most important forms of cultural expression) or create a coherent social and economic interaction - or it is at the very least made significantly more difficult. In the longer term this generates a national identity that, regardless of its often vague historical background, functions as the dominant (state) ideology, which has shown itself to be so central to the modern state’s political legitimacy.<sup>17</sup>

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<sup>13</sup> Karl Deutsch (1953) identified in his ground-breaking study of nationalism’s roots the nation (not the state) as a group of individuals whose members can communicate with each other with “greater complexity and intensity than with members of other groups”. Two years before Deutsch’s influential book on nationalism was published, Hanna Arendt noted that a cultural and linguistic “homogenous population [is] the most important prerequisite for evolution into a [modern] nation-state” (Arendt 1951/1976, p. 42). A common language is still the most regularly noted ingredient, and thereby that of highest value, in the national identity. According to a comprehensive survey by the American Pew Research Center, a common language is placed first on the list of national identity factors in all of the 15 countries involved (Stokes 2017).

<sup>14</sup> See Hertzfeld (2005) for a thorough analysis of cultural intimacy’s importance for a successful state formation. According to the survey conducted by the Pew Research Center, the factor “sharing national customs and traditions” was placed second in the list after a common language. Where one is born and which religion one practices came considerably lower down the list of the most important factors of national identity.

<sup>15</sup> The highly developed division of labour that followed the breakthrough of industrialisation presupposed a commonly accepted and widely used standard of communication, in practice a common language: *La langue du pain*, “the language of working life”, to reference Hroch (2015). For a classic analysis of the connection between industrialisation’s breakthrough and the growth of the national language, see Gellner (1987, 1993).

<sup>16</sup> See e.g. Lindström (1999; 2017). The barrier effect attributed to national borders, and thereby also the politically defined territory, in Europe and in the Nordic countries has during recent years been further clarified by Brexit (Kelly & Pearce 2019) and the European Government’s Corona-politics (Lundén 2020).

<sup>17</sup> The growth of this type of “state legitimised” nationalism is analysed, from various starting points, more closely by Kedourie (1960), Giddens (1995), Hobsbawm (1991), Smith (1991) and Anderson (1983). It should however be noted that this does not mean that today’s territorial states lack linguistic minorities, sometimes

## The Åland autonomy - Quo Vadis?

A century has passed since the Åland autonomy was launched at the beginning of the 1920s. During the 100 years since then the original Autonomy Act has been revised and updated twice (1951 and 1991), and a fourth version of the law has been under preparation since 2010. There should be, in other words, sufficient material for a closer examination of the degree of manoeuvrability that Åland, through its autonomy, has received,<sup>18</sup> and to which extent home rule has managed to cope with the underlying pressure of state integration that the relationship with the Finnish territorial state has in practice entailed.

This is also the primary theme of this report. The ambition is to, *based on a holistic perspective*, analyse the Åland autonomy's actual strengths and conditions for development. Focus will be on the autonomy's legal and political position against the background of the above-mentioned, state-wide territorial integration process. Which legal instruments and real possibilities does Åland have to secure, if needed, a societal development that diverges from that of the state in general? In which respects does today's autonomy model fail, and where does its strength lie? What is required of the future "autonomy politics" in order to - in accordance with the autonomy's original purposes - secure a pathway for the development of Åland that is more independent from the pressure of state integration?

## Background and autonomy development

An initial prerequisite to enable these questions to be answered is good knowledge of the Åland autonomy's extent, development and content, plus - not least - its legal position and political boundaries. In other words, what is needed is an empirically well-founded scrutiny of the autonomy's structure and characteristics. The history of the autonomy's establishment is an element of this background material, not least the international and geopolitical context that arose in the aftermath of the First World War and the establishment of a sovereign Finnish territorial state. Another central theme is the underlying "conditions of autonomy" in the form of the legal position and the scope for action that the first Autonomy Act offered. A third important ingredient in the knowledge base regarding the Åland autonomy's position and prerequisites is the development of the autonomy's legal and political scope for action that has occurred since the 1920s.

## The comparative approach

The need for knowledge does not stop here. An analysis that is limited to the autonomy as such limits the possibilities to draw more qualified conclusions regarding the autonomy's actual position and long-term development possibilities.<sup>19</sup> The result tends to assume the character of a monographic case-study, which can be of great value, but through its

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accompanied by strong territorial identities. For a critique of the tendency to equate (territorial) state and nation, see e.g. Cannadine (2013).

<sup>18</sup> The meaning in this report of Åland's (or the autonomy's) degree of manoeuvrability or "scope for action" is the actual available possibilities to, through the implementation of own legislation and/or own administrative measures, deviate from Finnish legislation and politics.

<sup>19</sup> Piketty (2019) goes so far as to assert that a correct assessment of a political system's quality and development potential cannot be made without "a comparative and transnational approach" (p. 12).

composition limits the ability to make interesting comparisons with similar autonomy arrangements in the surrounding world.<sup>20</sup>

This report therefore uses international comparisons as an important ingredient in judging Åland's possibilities to successfully deal with the tendency to territorial integration that by definition goes hand-in-hand with Finnish state sovereignty. The autonomies that have provided the necessary material for the report's international comparisons are the Faroe Islands, the Basque Country, South Tyrol, Gibraltar, Flanders and the Isle of Man.<sup>21</sup> The comparative approach is based on the understanding that the Åland autonomy shares a sufficient number of properties<sup>22</sup> with these autonomies to enable meaningful comparisons - but at the same time a sufficient number of divergent features to generate interesting (and relevant to policy) analyses and conclusions.

The ambition is to use the comparative analysis to improve our knowledge of Åland's position in a broader international perspective and thereby contribute to a clarification of the robustness, or lack thereof, of the autonomy's position in legal and political respects. The experiences of other European/EU/Nordic autonomous regions' "autonomy approach" should also facilitate the identification of suitable political and legal areas for future contributions and reforms aimed at improving the autonomy's legal position and political manoeuvrability.

## **This report**

The following report contains, including the summary, ten chapters. In the next three chapters (3-5) the international background to the autonomy's establishment in the years following the end of the First World War, and the conflict regarding the sovereignty of the Åland territory that arose between Sweden and the newly established state of Finland, will be described and analysed. An important part of this presentation is the international community's intentions regarding the autonomy, in other words, the fundamental purpose of the solution offered by the Åland autonomy.

This is followed by an examination of the result in the form of the first Autonomy Act from 1921, including the original goals for home rule as stated by Finland. Focus is on the first Autonomy Act's strengths and weaknesses with regard to the possibilities for positive future development. Based on the content of the present Autonomy Act (from 1991) there will follow a critical examination of how the autonomy has made use of the most important

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<sup>20</sup> In the literature on research strategies for comparative case-studies within the area of political science the opposite problem is sometimes identified: an "overgeneralisation" of the results from a single, delimited case. See e.g. Guy Peters (1998). For a more general and thorough review of the advantages/limitations with a comparative research approach, see e.g. George & Bennett (2005); Jackson (2012); Esser & Vliegthart (2017).

<sup>21</sup> This report's comparative material regarding these European/Nordic autonomies' legal status and varying degree of political scope for action in relation to their respective "mother states" is substantially taken from another report produced within the framework of this research project: *De legala och politiska förutsättningarna för Europas autonomier. En jämförande studie*. (Lindström 2020).

<sup>22</sup> This applies to a number of the more fundamental structural background factors that have lain behind their establishment, see chapter 6 of this report.

components of the original law in subsequent revisions of that law and in established praxis of interpretation.

In the next part of the report (chapters 6-7) we lift our gaze from the context of Finnish and Åland society and autonomy. We begin with an examination of the various types of international and national circumstances that have affected the establishment of our six reference autonomies, and how these concur with - or differ from - the case of Åland. Based on experiences from our European reference autonomies, nine important “autonomy factors”, which have shown themselves to be of crucial significance for the development of home rule, will be studied. The central question is in which way these factors have been utilised in the Finnish/Åland autonomy model. To answer this question, a systematic comparative analysis of Åland’s legal competence and scope for action with regard to the situation in the six reference autonomies will be conducted.

The following two chapters (8-9) comprise a summary of the Åland autonomy’s position with regard to (i) international law and international strengths, (ii) internal extent and contents, and (iii) the partnership with the Finnish state. This is followed by a critical review of the Åland autonomy’s possibilities to handle/oppose the tendencies to integration with the Finnish territorial state - and thereby also Åland’s possibilities for long-term development of its home rule in accordance with the autonomy’s underlying purpose and goal.

Against the background of these results and conclusions regarding the Åland autonomy model’s legal and political prerequisites and conditions, the report concludes (chapter 10) with a number of recommendations. The suggestions encompass necessary changes to the ways in which, from the Åland side as well as the Finnish, the scope for action that the present Autonomy Act allows is utilised. Because the study’s main result clearly indicates the need for a thorough renewal of the entire autonomy arrangement, the final chapter also includes a review of the most desirable parts of just such a future reform.

### 3. The Åland autonomy's background in international law

The strategically important position of the Åland Islands in the Baltic Sea has made them of particular interest to regional powers since prehistory. During the Viking and Medieval periods the islands were at the centre of the northern Baltic trade-routes. Åland was absorbed into the consolidating and growing kingdom of Sweden and remained there until the peace treaty of 1809 between Sweden and Russia. Following the annexation of Finland and Åland, Russia began the construction of a major fortress and fleet base at Bomarsund, turning Åland into a western outpost of the empire. The fortress was destroyed by French and British forces during the Crimean War and the Åland Islands were demilitarised in the Åland Servitude of 1856. This was the first time that the territory of Åland was the object of international legislation. Prior to the peace negotiations Sweden was offered possession of the islands but the Swedish king, Oscar I, suggested instead a “self-gouvernement” under British and French protection, which can be seen as the embryo of today's autonomy.<sup>23</sup>

Toward the end of the First World War the Ålanders began working for reunification with Sweden while, simultaneously, the Finns were looking to achieve independence from Russia. The Åland slogan was “Finland free - Åland Swedish”. In August 1917 democratically elected municipal representatives adopted a resolution regarding reunification, three months prior to the Finnish declaration of independence. The Åland resolution cited the principle of the people's right to self-determination.<sup>24</sup> The American president, Woodrow Wilson, included this principle in the fourteen points for peace and freedom for the peoples of the world, which he proposed to the Paris Peace Conference of 1919. The principle of the right of a people to self-determination is today included in the charter of the United Nations (UN). By virtue of this right all peoples may decide their political status and exercise control over their economic, social and cultural development.<sup>25</sup>

The Ålanders turned to the Swedish king, Gustav V, and, referring to the principle of the people's right to self-determination, requested reunification with Sweden - they also approached the governments of Germany, Finland and Sweden (all of whom had troops then stationed on Åland). Finland was not yet recognised as an independent state, and the turmoil caused by the collapse of the Russian empire had not yet settled. Sweden's government conveyed the question of sovereignty over Åland via diplomatic channels to France and Britain, who brought it to the Paris Peace Conference.

#### **The question of sovereignty over Åland at the Paris Peace Conference**

The peace conference in Paris began on 18 January 1919. The purpose was to regulate the relations between the victors of the First World War (Entente) and the Central Powers.<sup>26</sup> The

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<sup>23</sup> Lindholm (1982).

<sup>24</sup> Ibid.

<sup>25</sup> UN charter, article 1(2) and 55, and chapters XI and XII.

<sup>26</sup> Germany, Austria-Hungary, the Ottoman Empire (Turkey) and Bulgaria.

conference took place in five locations around Paris and continued until 21 January 1920. Delegates from 32 countries took part, though the Central Powers were not invited. The tone of the conference was set by the heads of government from the dominant parties, the USA, Great Britain, France and Italy.<sup>27</sup>

The end of the First World War saw the dissolution of four European empires. On the negotiation table in Paris lay a number of unsolved border demarcations resulting from the break-up of Austria-Hungary and the Ottoman Empire. In Russia, shortly after the October Revolution of 1917, the new authorities proclaimed freedom for all the peoples of the former empire to themselves decide on their form of government and national affinity. The principle of the right to self-determination for peoples and nationalities applied also in the newly formed Soviet Russia.

Sweden had been neutral during the war and was thereby not invited to the peace conference. Finland had not yet been recognised by the Great Powers. However, Sweden was able to use diplomatic channels with Great Britain to have the question of sovereignty over Åland placed on the agenda in Paris, with the justification of guaranteeing a peaceful development in the Baltic region.<sup>28</sup>

The French attitude to the question of sovereignty over the Åland territory varied. The initial disinterest to raise the question at the peace conference was due to the fact that it wasn't relevant to French political interests. The Swedish and Finnish negotiators presented their respective arguments, with Sweden stressing the principle of the people's right to self-determination, a principle which was fundamental to the peace conference's work. The Åland Islands, with its well-defined territory and homogenous, ethnically Swedish population, satisfied all of the criteria to vote on the question of nationality.<sup>29</sup> Finland, for their part, claimed that their newly established state could easily be jeopardised with reference to Bolshevik successes in Russia, which could have a detrimental effect on the political stability of the region. The French, at least initially, were of the opinion that Finland should be content with the Åland Islands' strengthened neutrality. It was also considered impossible to deny the Ålanders a referendum on their nationality.

One of the more significant issues at the peace conference was the delineation of state borders in Eastern Europe. In the ruins of Austria-Hungary's dissolution, and as a consequence of 600 years of Ottoman rule, the mixture of peoples with varying religions and languages presented minority questions that were difficult, if not impossible, to solve.<sup>30</sup> The steering principle was to offer some form of "personal" autonomy for the many minorities that were stateless or had found themselves on the "wrong" side of a state border. In only a handful of cases was the alternative of territorially based (regional) autonomy offered as a solution.<sup>31</sup>

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<sup>27</sup> Wells (1923).

<sup>28</sup> Lindholm (1982).

<sup>29</sup> Barros (1968)

<sup>30</sup> For a presentation of the peace conference's handling of the European minorities problem, see Weitz (2019). For an analysis of such (newly-created) territorial conflict zones in post-war Europe, see Weltman (1995).

<sup>31</sup> Hannum (1981).

During the peace conference questions regarding the sovereignty of several border regions, including Åland, Schleswig-Holstein, Spitsbergen, Alsace-Lorraine and South Tyrol, were addressed. The diplomatic foot-work was conducted at a high level, with the victorious powers' own interests (primarily French and British) dressed-up in a variety of arguments. The formally dominant principle of the people's right to self-determination was quietly disregarded if it was deemed detrimental to the war's victors.<sup>32</sup> The Italian ambassador regarded the Ålanders' demands as acceptable, but recognised that the implementation of the principle could negatively affect the question of South Tyrol from an Italian point of view.<sup>33</sup> Denmark's demands regarding Schleswig were more in-line with the victorious powers' wishes because they restricted German territory, and for the same reason Elsass-Lothringen became Alsace-Lorraine.

The significant issue in the case of Åland was the uncertainty surrounding Russia's future. Finland, which had been recognised as a sovereign state by only a few states, had indicated a willingness to take part in some form of action against the Bolsheviks in what was still an unstable and disintegrating Russia.<sup>34</sup> The Great Powers switched several times between the people's right to self-determination and their own internal interests. The final result was that the conference's High Council decided that all territorial issues relating to the former Russia should be referred to the future League of Nations. The same Great Powers would also be represented there, but any decisions would be made within the framework of this newly formed, international co-operation.<sup>35</sup>

### **Minority issues in the League of Nations**

The suggestion to create the League of Nations was accepted by the peace conference on 28 April 1919 and ratified on 10 January 1920 in the concluding Treaty of Versailles. The League had the task of handling questions that the peace conference had left unresolved. In the grey area between the work conducted by international law on behalf of humanity and the much crasser, state geopolitics, lay questions of minority protection. The principle that religious and linguistic minorities should be protected was already part of the Allies' war objectives.<sup>36</sup> Accordingly, the League's function was to bring about the protection of those minorities that the new, post-war borders had created.

The humanitarian issues would have been more clearly recognised if minority protection had been implemented in states other than those which had been defeated or newly created. However, the League considered the system to be functional due to the fact that minority populations could turn to the League itself with any complaints. The League would deal with many complaints concerning minorities, and the Council's decisions helped a number of states to correct faults in their policies of minority protection. Without the monitoring of the

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<sup>32</sup> Barros (1968).

<sup>33</sup> Ibid.

<sup>34</sup> Dreijer (1973).

<sup>35</sup> Lindholm (1982).

<sup>36</sup> Barros (1968).



League's appointed agencies minority protection would most likely have been ineffectual.<sup>37</sup> In addition to purely humanitarian progress, minority protection in several cases prevented hostilities, which was the League's primary purpose.<sup>38</sup>

The League's work with minority issues led, amongst other things, to the creation of a territorial autonomy for the Free City of Danzig (*Freie Stadt Danzig*), a German-speaking enclave in Poland, the German-speaking enclave of Memel in Lithuania, and the Rusyns/Rusnak in Carpathian Ruthenia. The majority of fragmented nationalities in Eastern Europe were offered, as an alternative, non-territorial minority rights, in which individuals enjoyed certain minority rights that were stipulated in a "minority treaty" with a number of concerned states. Those states that were forced to accept this type of treaty saw it as a considerable limit to their territorial sovereignty - which was made all the more unjust by the fact that the equivalent ruling was never implemented to the same degree regarding minorities in the victorious nations of Western Europe.<sup>39</sup>

### **Finnish initiative rejected by Åland**

Finland proposed a law of autonomy for Åland in 1919 with the purpose of strengthening its position with the Great Powers. The Åland autonomy would be as "broad as the preservation of state unity allows".<sup>40</sup> A number of Finnish politicians saw the suggestion as too far-reaching, but the Finnish representatives involved in discussions in Paris and Geneva considered that it was the minimum required to satisfy the peace conference's demands for a well-functioning nationality protection.

The Finnish Parliament approved the law in May 1920. The Ålanders, however, rejected Finland's offer of autonomy - the goal was reunification with Sweden, not home rule within Finland.<sup>41</sup> Finland's government reacted by imprisoning two of the leading figures in the Åland movement, accusing them of high treason.<sup>42</sup>

### **The Åland Islands Question to the League: the work of the Commission of Jurists and the Commission of Inquiry**

Even while the Åland Islands Question was being addressed by the peace conference's Baltic Commission during the spring of 1919, an unofficial investigation was made by the League's secretariat. The Åland Islands Question was sensitive and required the secretariat to be in a good position to handle it, requiring, not least, knowledge of the Great Powers' position. For this reason, a suggestion was drawn up for the demilitarisation and neutralisation of the Åland Islands similar to the Ionian Islands.<sup>43</sup> Regarding sovereignty, a Finnish-Swedish agreement

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<sup>37</sup> This primarily refers to the Council's *Minority Committee* and *Legal Council*.

<sup>38</sup> Barros (1968).

<sup>39</sup> An anecdote relating to the Polish elections of 1930 concerns the White Russian minority's complaints of persecution and the imprisonment of political activists. The League's minorities' committee rejected the complaints with the motivation that political persecution during an election was part of political life in Poland.

<sup>40</sup> Tulenheimokommittén (1919, p. 1).

<sup>41</sup> Ålands Landsting (1920).

<sup>42</sup> Barros (1968).

<sup>43</sup> Greek islands near the Turkish west coast.

was recommended that would give Åland an international status comparable to that of the Free City of Danzig.<sup>44</sup>

The League's Council decided in May 1920 to appoint a judicial commission to investigate whether the Åland Islands Question was, according to principles of international law and the League's charter, an internal matter for Finland. The Commission of Jurists would also investigate the validity of the Åland Servitude of 1856. The commission concluded that the Åland Islands Question was not an internal matter for Finland and that the Council had the competence to decide the archipelago's future according to the alternative deemed most just and suitable. As a basis for their conclusion the commission specified, amongst other things, the population's claim to "the principle of national self-determination, and certain military events which accompanied and followed the separation of Finland from the Russian Empire at a time when Finland had not yet acquired the character of a definitively constituted State".<sup>45</sup>

The Council adopted a resolution regarding its competence to resolve the Åland Islands Question and appointed a commission of inquiry that would suggest a "just and suitable solution".<sup>46</sup> The Council appointed three members to the commission, from Belgium, Switzerland and the United States. The Great Powers, Britain, France and Italy, avoided this sensitive mission. The Commission of Inquiry drew much the same conclusions that had previously been suggested by the secretariat. The (geo)political considerations were conclusive and were expressed as "peace, the future good relations between Sweden and Finland, as well as the islands' own prosperity and success" would be best served if sovereignty over Åland was awarded to Finland. Furthermore, Finland and Sweden should agree on additional guarantees to preserve the Ålander's Swedish ethnic national identity to be included in the existing Autonomy Act. These guarantees would be monitored by the League, primarily through the right given to the Ålanders to complain.<sup>47</sup>

It is worth noting that the secretariat familiarised themselves with the Autonomy Act and contributed draughts of supplements that the Commission of Inquiry later included in their final report. The American member, Fischer, concluded thus:

"We succeeded, however, in extracting from the Finns a considerable enlargement of the law of autonomy, which delights the Alanders and it is significant that the Finnish Gov't would never have made these concessions to the Swedes, though they were prepared, after a little steady pressure, to make them to the Council of the League. Indeed it is clear to me now *that the dispute could never have been settled by the ordinary methods of diplomacy*".<sup>48</sup>

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<sup>44</sup> Vali (1958).

<sup>45</sup> League of Nations' *Official Journal. Special Supplement*. (p. 3), October 1920.

<sup>46</sup> *Ibid*, p. 9.

<sup>47</sup> Se p. 104 in the League of Nations' publication *Ålandsfrågan inför Nationernas Förbund I - III*. Stockholm 1920 - 1921.

<sup>48</sup> Quote with italics, in Barros (1968, p. 333).

## **The League of Nations' solution to the Åland Islands Question**

The League's Council decided on 24 June 1921 to follow the recommendations presented in the Commission of Inquiry's report. Finland would acquire sovereignty over Åland, and the Ålanders would receive new guarantees to preserve their ethnic national identity. The islands would be demilitarised and neutralised "to safeguard peace, good relations between Sweden and Finland, and the prosperity and success of the islands' population".

The new guarantees were intended to retain Swedish as the language of education in schools, to preserve property ownership in the hands of Ålanders, to restrict the voting rights of immigrants within reasonable limits, and to guarantee that the Finnish state's representative on Åland enjoyed the trust of the local population. The Council suggested that these guarantees should be formulated in detail in an agreement between Sweden and Finland.

If agreement could not be achieved then the Council would, itself, decide which guarantees should be included in the Autonomy Act. The Council concluded that "the League of Nations will monitor these guarantees under all circumstances".<sup>49</sup>

## **The Åland Agreement, non-fortification and neutralisation**

Negotiations between Sweden and Finland led to the so-called Åland Agreement, which included detailed versions of the guarantees for the Åland population that the Council had outlined.<sup>50</sup> Åland would not be required to fund schools in which the language of education was not Swedish, and Swedish would be the language of instruction in all publicly funded schools. Ålanders were granted preemptive rights when real estate was sold. Immigrants would need to be resident in Åland for five years before receiving the right to vote. The governor would be appointed by the Finnish president with the consent of the Åland Legislative Council's (the present Åland Parliament's) speaker. Finally, it was decreed that Åland would be ensured certain tax revenues (half of the region's land tax) to cover the costs of the autonomy.<sup>51</sup> The implementation of these guarantees would be monitored by the League's Council, with the Finnish Government obliged to forward any complaints from the Åland Legislative Council to the League. Judicial questions would be heard by the International Court of Justice in the Hague.

After Sweden and Finland had agreed on the guarantees, the League's Council finalised the content of the Åland Agreement on 27 June and attached it to the decision of 24 June 1921. The League's decision also contained a strengthening of the Åland territory's demilitarisation, as originally defined by the Åland Servitude of 1856. The League's secretariat assembled a group of military experts, who prepared a treaty regarding the demilitarisation and neutralisation of the Åland Islands. The Council then invited all of the Baltic states, with the

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<sup>49</sup> Quote from the League's decision of 24 June 1921, article 4.

<sup>50</sup> The Åland Agreement of 27 June 1921.

<sup>51</sup> The demand to guarantee the right to tax revenues was presented by the Åland representatives to the General-Secretary and to the Council's chair, and was discussed during negotiations. Finland was unwilling, but accepted a compromise after Swedish intervention, which was based on Åland receiving half of the region's land tax (Eriksson 1961). The land tax was the single most important contemporary state tax, a precursor to today's income tax. See also chapter 4, pp. 30, 33 and footnotes 63, 64.

exception of Soviet Russia, to a conference in Geneva where, in October 1921, a mutually binding treaty was signed on the non-fortification and neutralisation of the Åland Islands.<sup>52</sup>

### **Summary conclusion**

The decisions in Geneva gave Åland a base in international law that the Autonomy Act, demilitarisation, neutralisation and Åland's international status all rest on. The autonomy model has its origins in similar territorial autonomies that were created after the end of the First World War, either in connection with the peace negotiations or through the agency of the League of Nations. The material contents of home rule were validated by a specific Autonomy Act, which could not be amended without the Ålanders' approval. And if it was deemed that Finland failed in its responsibilities regarding the autonomy and the protection of the Ålanders' Swedish nationality, which was the Act's primary purpose, then the Ålanders were given the possibility to present their opinions and complaints to the League. Furthermore, demilitarisation and neutralisation, even if based on a separate international agreement, formed an integral part of the solution represented by the Åland autonomy.

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<sup>52</sup> Wernlund (1953).

## 4. The result: the Åland autonomy of 1921

The Åland autonomy was one of a number of autonomies that came into existence after the First World War due to demands for the application of the principle of the people's right to self-determination. Some ethnic groups received minority protection, regardless of where they lived in a state's territory, while others received a territorial autonomy. Åland fulfilled the criteria for a territorial autonomy because of its well delineated (insular) geography, the minority status of the language, and the internationally contested issue of sovereignty.

As previously noted, the Finnish Government hurriedly pushed through a bill for an Autonomy Act for Åland in order to influence the ongoing debate on the Åland Islands Question in Paris. The bill outlined the sort of minority protection demanded after the First World War. Its purpose was to allow the Ålanders the broadest possible home rule - provided that this did not encroach on full state sovereignty over the archipelago. By fulfilling the new demands regarding minority protection for the Åland population, the Finnish state hoped that the critically important question of sovereignty would be resolved to their advantage.

During discussions in the League of Nations it was ascertained that the Autonomy Act proposed by Finland would create an autonomy with a democratically elected legislative assembly within a clearly delineated territory - broadly accepted as the most important criteria for a territorial autonomy. However, sufficient guarantees to preserve the Åland population's Swedish identity were deemed to be missing and would need to be added. The League's request for additions to the law was couched in terms of a specific protection for the Åland population's national identity, i.e. its Swedish language, culture and local customs.

### **The Tulenheimo Committee drafts the first Autonomy Act**

In July 1919 the Finnish Government formed a committee to draft a bill to address the future geographical organisation of the country, the so-called Tulenheimo Committee. The committee's main task was to propose the future political and administrative organisation of the Finnish counties. An additional task was to "with all urgency" draft a bill regarding an Autonomy Act for Åland. The committee was reinforced with additional members chosen from the so-called Åland Committee, a self-nominated group with good knowledge of Åland society,<sup>53</sup> that had already drawn up guidelines for an Åland Autonomy Act.

The Tulenheimo Committee used the German federal model as a basis for its work. The committee also considered existing autonomous territories in Europe and commissioned a study of these autonomies.<sup>54</sup> The study revealed a number of differences between the chosen autonomies. In certain cases the state could unilaterally abolish home rule while, in others, such an act required the autonomy's consent. The study emphasised that political

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<sup>53</sup> The committee actively opposed the demand for reunification with Sweden. Its members were mainly Ålanders employed by the state on Åland or in Finland, as well as Finnish officials who worked (or had worked) on Åland.

<sup>54</sup> The study, which was conducted by law professor Erich, was integrated into the Tulenheimo Committee's report (1919, pp. 13-19). In addition to its focus on the German federation, the study also included, amongst others, British dominions, the Channel Islands, Iceland, Croatia, Bosnia-Herzegovina and Elsass-Lothringen.

appropriateness and trust could, in practice, be just as important as the legal protection of an autonomy.<sup>55</sup> The committee concluded that the referred to autonomies all had their own particular characteristics and background history with a varying degree of constitutional or equivalent protection. This was particularly so for the British case-study, the Channel Islands, that demonstrated a well-functioning and open relationship to London despite the lack of a written Constitution.<sup>56</sup> The existence of a European autonomy model for use in the Åland case was, therefore, lacking.

Instead, it was the German legislative tradition, with its focus on clear regulation down to a detailed level, that formed the most important influence in the final draft of the first Åland Autonomy Act.<sup>57</sup> The German legislative tradition came to Finland during the Swedish period, and was refined during the period of russification so that the Finnish autonomy might survive the connection with tsarist Russia. To use a constitution based on “legal customs” (as the British autonomies) was more or less unthinkable within the framework of this legislative tradition.<sup>58</sup>

### **The Tulenheimo Committee's suggestion for an Autonomy Act is adopted**

With regard to the division of competence between the Finnish Parliament and the Åland Legislative Council (today's Åland Parliament), the Tulenheimo Committee suggested that the first Autonomy Act should give the Finnish Parliament competence over all laws deemed to apply to the entire country that promoted “the greater national interest”.<sup>59</sup>

The passing, changing, interpreting<sup>60</sup> and abolishing of constitutional law was reserved for the Finnish Parliament, with the exception of the Autonomy Act, where the Åland Legislative Council's consent was necessary. Even if the study commissioned by the Tulenheimo Committee showed that several of the reference autonomies functioned well despite lacking the protection of a strong constitution, it was judged necessary to offer the Ålanders constitutional guarantees for their autonomy. It was, therefore, necessary to include the provision that the Autonomy Act could not be altered without the Åland Legislative Council's consent.

The suggestions mentioned above, as well as the Tulenheimo Committee's directives on the more concrete contents of the Åland competence, were substantially realised in the first Autonomy Act, which was passed by the Finnish Parliament in 1921. The most important ingredients of this law are briefly described and discussed below.

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<sup>55</sup> “Another point is, that political appropriateness and other circumstances could even create a hinder for such (changes to home rule) alterations to the same extent as guarantees of a legislative nature [...]” Quoted in Tulenheimokommittén (1919, p. 13).

<sup>56</sup> Cf. chapters 7 and 8 in this report, and Lindström (2020).

<sup>57</sup> Tulenheimokommittén (1919, p. 17).

<sup>58</sup> For a description of the various legislative traditions behind Europe's regional autonomies, see Lindström (2020).

<sup>59</sup> Tulenheimokommittén (1919, p. 20).

<sup>60</sup> The term “interpreting” in Finnish legislation is more closely defined in the next chapter, p.38.

## The division of competence and constitutional control

The Autonomy Act's scope was effectively delimited by the definition in the law of twelve central legislative areas over which the state had jurisdiction, with the motivation that they were important for securing "state unity". These areas included private law, with the exception of agriculture and other industries.<sup>61</sup> The exclusive state competence covered the basis of the right to practice a business or occupation, the basis for education and the basis for the right to vote in municipal elections. The vague definitions meant, in practice, a series of legislative and administrative areas with overlapping and/or mixed areas of competence. Furthermore, the competence of the Finnish Parliament also included new legal areas "not yet envisaged by the legislation".<sup>62</sup>

The Finnish Parliament was given competence over the taxes and fees that are "commonly generated", in principle, the entire state taxation. However, to cover the costs of the autonomy some lesser tax forms, an element of the property tax and certain minor excise duties, were excepted. In addition, Åland received half of the income from the so-called "land tax" - a form of property tax of much greater financial importance than today's property taxes<sup>63</sup> - with the purpose of implementing the League's decision to make the autonomy financially viable. However, the legal regulation of the land tax was an area exclusive to the Finnish Parliament. The Åland Legislative Council had the right to decide on certain minor indirect taxes and fees.<sup>64</sup>

All other legislation would be referred to Åland's competence, a so-called residual legislative competence, either so that the Åland Legislative Council, according to Åland law, adopted the actual Finnish law or drafted its own law. The leading principle was that national legislation that belonged to a legal area in which the autonomy had competence would not automatically apply to Åland. The "residual principle" existed in several of the autonomies studied for the Tulenheim Committee's report. It was not judged to jeopardise "the maintenance of state unity" because a strict legislative control of all council laws was introduced.<sup>65</sup> The main purpose of this control was to guarantee that the autonomy's legislative process did not encroach on the Finnish Parliament's competence and thereby threaten "the preservation of

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<sup>61</sup> The exception for the regulation in private law of agriculture and other industries was, however, ineffectual due to a succession of Supreme Court denials during the 1920s regarding Åland legislation within this area of law (Jansson 2020). For further discussion see the next chapter.

<sup>62</sup> Åland Autonomy Act, article 9, section 2, sub-section 13. (FFS 6/1920). This referred to legislation within heretofore unknown legal areas, which was highly unusual. The clause lacked motivation but has nevertheless been used in the legislative control as a basis for letting Åland laws lapse (Jansson 2020). For further discussion, see next chapter.

<sup>63</sup> The taxation of land and properties was, until the 1910s and 1920s the main source of state income in Europe (Piketty 2019). It was replaced by the present type of state-controlled income tax during the 1920s, which was also the case in Finland.

<sup>64</sup> Åland also had the right to impose an additional, "supplemental tax". The thought was that Åland would have the right to decide on a supplemental tax to finance the autonomy in the same way that the Tulenheim Committee had suggested for other counties in the reform of regional administrations that was intended to create autonomous areas of higher status than the municipalities. The income from the suggested tax forms that Åland would receive was deemed to correspond to the costs of the administrative areas in the future regions/counties of Finland that would be financed by the state. The planned regional reform was never carried out.

<sup>65</sup> Tulenheimokommittén (1919, p. 22).

state unity”.<sup>66</sup> The legislative control was seen, paradoxically, as a guarantee of greatest possible (internal) home rule. The process of review would occur *in casu* and in this way avoid the development of damaging circumstances in Åland with regard to the nation’s cohesion and general interests.

An Åland law could only be defeated through the legislative control if it encroached on the Finnish Parliament’s competences, or if the Finnish president judged that it was contrary to the republic’s general interests,<sup>67</sup> in practice, a combination of legal review and political control. Because the president was legally obliged to refer to the Finnish Supreme Court before an Åland law could be defeated, this meant that the Supreme Court’s method of interpretation was in many cases what decided the more concrete limits of the autonomy’s actual extent.

### **The law’s strengths and weaknesses seen from an autonomy perspective**

Here follows an analysis of the autonomy model as defined by the Tulenheimo Committee and the Finnish Parliament. What were its strengths and weaknesses with regard to the possibilities, in the long run, to fulfill the autonomy’s original purpose, namely to safeguard the Ålanders’ linguistic identity and to develop home rule to its greatest extent without overstepping the boundary toward state formation.

We begin with an examination of the 1921 Autonomy Act’s strengths:

- *Framework legislation and residual principle*

The residual principle that was included in the first Autonomy Act was clearly superior to the enumeration principle that was introduced in following Autonomy Acts (see the next chapter). The residual principle lessened the scope for interpretation and left - at least in principle - greater freedom for the autonomy. Newly created Finnish laws that lay outside the state’s area of competence would not be effective in Åland unless they were passed by the Åland Legislative Council, which also had the alternative to draft its own law within the same legal area.

- *Strong constitutional position*

The Autonomy Act cannot be changed, abolished or interpreted without the consent of the Åland Legislative Council. The “interpretation of law” was a legal institution developed by Finland during the Russian period in order to guarantee necessary updates to the old (Swedish) Constitution.<sup>68</sup> The legal institution of “interpreting” enabled an authoritative and extensive interpretation of existing legal praxis to achieve its original purpose. This even allowed an interpretation of the Autonomy Act’s contents based on its underlying and more essential purpose.

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<sup>66</sup> Ibid, p. 19. An equivalent legal control to ensure that national legislation does not encroach on the autonomy’s area of competence was not suggested, nor has it ever been introduced.

<sup>67</sup> Åland Autonomy Act, article 12, sub-section 3 (FFS 6/1920).

<sup>68</sup> This applied primarily to the maintenance and updating of the form of government, and the state security act from the reign of the Swedish king, Gustav III, which functioned as the Grand Duchy of Finland’s Constitution during the Russian period.



- *Regulation in international law*

The Åland autonomy was developed by Finland in order to gain sovereignty over Åland. The Autonomy Act's purpose was to preserve the Åland population's Swedish identity. The law was reinforced with guarantees, including those on voting rights and property ownership, which were monitored by an international organisation (the League of Nations). Åland also received the right to complain to the League, which was an important requisite underpinning Åland's status in international law. Åland was also neutralised and demilitarised in the Åland Convention of 1921.

- *Agreement decree*

Through regulation, and with the Åland Council's (present Åland Government's) consent, administrative functions could be transferred without the need to revise the Autonomy Act. This created a flexible system that provided for a well-functioning co-operation.

- *The Åland Delegation*

The Åland Delegation was created as an independent body to determine the level of state contributions necessary to finance the autonomy. The Åland Legislative Council and the Finnish Government each appointed two representatives to the delegation. The governor of Åland chaired the delegation and had the casting vote. As the highest representative of the Finnish state in Åland the governor had other responsibilities than governors in other parts of Finland, and was also considered to be impartial. The delegation quickly assumed the role of an expert body in questions relating to Åland, though this was not presumed by the Autonomy Act. Even the republic's president asked for the delegation's opinions regarding adopted laws within the autonomy.

The points listed above from the first Autonomy Act of 1921 together offered a workable foundation for the development of Åland home rule as envisaged in the original concept for the autonomy.

The law also had a number of weaknesses regarding the possibilities to develop home rule in accordance with the Autonomy Act's original purpose. The four points listed below were those with the potential to have the greatest negative consequences for the autonomy's long-term development:

- *State competence in fundamental legal rights*

The "fundamentals" for business, education and municipal voting rights were, according to the law, the exclusive competence of the Finnish Parliament, even within areas otherwise deemed to lie within the Åland Legislative Council's competence. Attempts to define and interpret these fundamental rights (for considerable parts of the Åland legislation) led to many disputes between the Åland Legislative Council and the Supreme Court, disputes in which the Supreme Court, in practice, had the last word<sup>69</sup>. The ruling regarding the state's competence in these "fundamental legal

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<sup>69</sup> For a more detailed account of these interpretative disputes during the 1920s, see Jansson (2020). This subject is discussed further in the next chapter.

rights” gave rise to several areas of mixed competences, where the ability to interpret the various limits of competence to the autonomy’s disadvantage were great. Furthermore, the state required its relevant authorities to monitor this process, even with regard to the autonomous Åland.

- *The limiting effect of legislative control*

According to the Autonomy Act the state had the power to review Åland legislation, giving the state the possibility to set the limits of the autonomy’s extent. The first decade after the enactment of the Autonomy Act was, therefore, dominated by a tug-of-war between the Supreme Court and the Åland Legislative Council, testing Åland’s competence in various legal areas. The Supreme Court’s interpretation of the Åland bills - with “state unity” as a vital benchmark - was, in practice, a strongly limiting factor in the development of the autonomy. The interpretation of laws was usually very strict and had the primary purpose of controlling the state’s interests, an ambition that the preparatory work on the Autonomy Act reveals.<sup>70</sup>

- *Insufficient competence regarding taxation*

The autonomy’s limited competence in areas of taxation was defined on the basis of the existing (1919/1920) taxation system, though the Åland Legislative Council could decide on property tax and certain business and entertainment taxes.<sup>71</sup> Furthermore, Åland could impose extra taxes over and above the state taxes, but only on the same grounds as state taxation.

The autonomy’s already limited taxation rights became, in practice, meaningless when new forms of taxation were introduced during the 1920s in Finland.<sup>72</sup> These new taxes (which to all intents and purposes replaced the earlier taxation system) would be interpreted (by the Supreme Court) as an area of state competence. Instead, it became common practice that Åland received a three-year settlement from the state to maintain the autonomy - despite the fact that this was supposed to be used only as an exception. This laid the foundation for an Åland autonomy that essentially lacked the necessary means to sustain its own finance and taxation politics, and which instead relied entirely on annual state funding.

- *International treaties*

There was no provision in the first Autonomy Act requiring that the Åland Legislative Council must give its consent to international treaties that concerned areas of Åland competence. This meant, in practice, that international treaties entered into by Finland could delimit the autonomy’s area of competence.

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<sup>70</sup> Tulenheimokommittén (1919, pp. 12 and 22).

<sup>71</sup> The competence over municipal taxation was reserved for the autonomy. See also the next chapter and chapter 7.

<sup>72</sup> Cf. footnote 63 above.

## **The critical ingredients of the autonomy model**

The original aim of the Autonomy Act was, as far as possible, to let the Ålanders take care of their own affairs within the Finnish state. The first Autonomy Act was structured in a way that gave good prerequisites for a successful development of home rule. The model had much in common with contemporary, well-functioning European autonomies, offering the process of home rule good potential for development in co-operation with the state and in an atmosphere of understanding and mutual respect. The reinforcing of the Autonomy Act with guarantees concerning ethnic national identity and, moreover, the right to complain to the League was seen to provide a solution that corresponded to current international law.

However, as stated above, there were factors that, from the autonomy's perspective, were negative and had a potential to limit the future development of home rule. Not least of these was the Finnish legal tradition (established during the Russian period and inspired by German traditions) in combination with a strong tendency in the process of legislative control to prioritise the state's unity and general interests. In addition, the lack of control available to Åland over taxation and the economy had a negative effect on the potential to develop the system of home rule's economic and political scope in the way that was originally intended.

A synthesis of the political and legal ambitions that lay behind the establishment of the Åland autonomy and the above review of the first Autonomy Act's strengths and weaknesses reveals six factors that are especially important, if not vital, prerequisites for the Åland autonomy model's long-term development. These are:

- Åland's status in international law
- Guarantees according to the current (Finnish) Constitution
- The exclusivity, extent and contents of the area of Åland's legislative competence
- The possibility of continuous development of home rule
- Control over taxation and the economy
- The autonomy's international competence and status

The next chapter of the report provides a closer analysis of how these critically vital components of home rule have been handled and developed by the Åland autonomy's main parties. The chapter focuses on the results of the development of home rule during the past 100 years, as embodied in the (third) Autonomy Act, and the scope for action that this allows.

The central issue is whether it was possible to maintain those qualities of the first Autonomy Act that were positive for the autonomy and to use them to support a development of home rule in accordance with the original intentions, or if the limiting factors also present in the law have had a noticeable effect on the autonomy's actual development up until the present day.

## 5. 100 years later: The extent and limits of home rule

The first years of home rule were characterised by intensive work to build up the administration and simultaneously prepare numerous laws. A number of new laws were created, despite limited resources, and a functioning administration was quickly established. Finnish legislation applied during the period of transition until the Åland Legislative Council (today's Åland Parliament) had passed its own laws in those areas where it had the competence to do so.

The control of Åland legislation was a new function for the Finnish Supreme Court, which from the beginning adopted a strictly "letter of the law" approach to its interpretation of the Autonomy Act. The Åland Council (today's Åland Government) took a more open approach to the legal text, often referring to the underlying intention of a fixed ruling as well as to the more fundamental purpose of the autonomy. Even if a law was defeated in the Supreme Court, the Åland Parliament sometimes prepared a new law in the same matter, but now with more extensive motivation. However, it was the strict interpretive principles of the Supreme Court that prevailed.

During the 1920s the Åland Delegation became more actively engaged due to its specialist competence regarding Åland. Several of its members had been active in both the Åland Committee and the Tulenheimo Committee, and therefore had good knowledge of the Autonomy Act's prerequisites and structure.<sup>73</sup>

At the end of the 1930s work was begun on the first revision of the Åland Autonomy Act, which led to the new Autonomy Act of 1951. The most significant changes included the introduction of a detailed definition of competences for both the Åland and the Finnish parliaments, a reform that, in practice, meant that the Supreme Court's interpretations of the first Autonomy Act during the 1920s and 1930s were codified. The system of financing the autonomy that was introduced in the first Autonomy Act was confirmed, the Åland Delegation received a more significant role, and the right to lodge a complaint with an international body was removed. Finally, a statute was introduced to the Autonomy Act that required the Åland Parliament's consent before international agreements that concerned Åland's area of competence could apply to Åland territory.

The biggest change in the second and latest (1991) revision of the Autonomy Act was the free right to budgeting, which meant that the Åland economy was less tightly bound to the state budget. Subsequent changes to the law have been limited, including changes initiated when Finland and Åland joined the European Union (EU), and when the new Finnish Constitution was introduced.

In 2010 the Åland Government appointed a committee to draw up plans for a major revision of the Autonomy Act, which would make it the third revision. The most far-reaching

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<sup>73</sup> See the previous chapter.

suggestions included a return to the residual principle with regard to legislative competence, extended taxation rights (and thereby a reform of the economic system), and a clarification that the Autonomy Act is on an equal standing with the Finnish Constitution. Furthermore, a number of definitions of competences regarded as contentious by the legislative control were clarified.

The initiative eventually led to the appointment by the Finnish Government of a parliamentary committee with representatives from both Finland and Åland. The committee submitted its report in 2017.<sup>74</sup> After a round of consultations in the Finnish Government ministries, a proposition was drawn up that, in its contents, differed greatly from the original Åland suggestion. After this the work of revision has been slow. The only new legislation that has resulted from the past ten years of work is a change in the way that the remuneration of taxation revenues to Åland is calculated.

### **The development of Åland's status in international law**

The fact that the Åland Autonomy Act was established with the support of a League of Nations' decision gave the autonomy, with its guarantees for the preservation of the population's Swedish nationality, a clear status in international law. The language guarantee was first specified in the Åland Agreement between Sweden and Finland. As discussed in earlier chapters (3 and 4), the Åland Parliament had, in addition, the right to file a complaint to the League's Council if it was deemed that Finland had not fulfilled its obligations to the Åland people.

The right of complaint lost its recipient when the League was dissolved in 1946 and replaced by the United Nations (UN). In a UN enquiry from 1950 on the judicial validity of the League's various minority commitments, it was established that the UN would not adopt the Åland right of complaint to the League.<sup>75</sup> However, the UN can decide to adopt the League's role, but only if it is deemed necessary to do so.<sup>76</sup> This amounts to a significant weakening of Åland's status in international law. After having had direct recourse to a broader, international judgement of Finland's possible breaches of its obligations to the Åland population, it is now required that Finland itself or another state requests that the UN or the International Court of Justice in the Hague handles any complaints from Åland.

In the proposition of 1946 for a new Autonomy Act there was a formulation that the Finnish Government should undertake to re-establish the right of complaint to a suitable international body when the possibility arose.<sup>77</sup> This promise was not included in the Autonomy Act of 1951, nor in the Act of 1991. Åland has raised this question in connection with every revision of the Autonomy Act but it has been rejected with the motivation that there is no suitable recipient organisation, and that the autonomy is guaranteed by the Finnish Constitution.

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<sup>74</sup> Justitieministeriet (2017).

<sup>75</sup> United Nations (1951).

<sup>76</sup> See Lindholm (1982).

<sup>77</sup> See *Förarbetena till 1920 och 1951 års Självstyrelselagar. Del II*. Unpublished document issued by the Åland Government archive.

## **Nationality guarantees: the rights of domicile, of practising business and of real estate acquisition**

The guarantees for the preservation of the Swedish language and national identity in the original League decision are today realised in the form of the rights of domicile, of practising business, and of real estate acquisition. In legal terms these are based on the earlier, Finnish citizenship law and legislation concerning the right of non-citizens to run a business and acquire real estate in Finland. The main rule is that these rights are acquired after an individual has lived permanently in Åland for five years.

The right of domicile acts as a regional citizenship in addition to Finnish state citizenship, and gives the right to vote in Åland elections as well as the right to practise business and acquire real estate. The right of domicile is derived from the League's guarantees, and was confirmed in the Autonomy Act so that everyone who had lived five years in Åland and can speak Swedish acquired this right. In specific cases, individuals could be granted the right of domicile by the Åland Government. The original, somewhat ineffectual, right of redemption was replaced in 1975 by the more effective right of property ownership.

All of these rights, which had the ultimate purpose of securing Åland's Swedish-speaking identity, would later be challenged by the UN's convention on human rights, the European convention on human rights, and a number of other international treaties concerning people's basic rights. An example of this was the challenge made by the Finnish Government's Foreign Affairs Committee to the validity of the League's guarantee regarding Swedish as the only language of education in publicly funded schools in Åland.<sup>78</sup> The committee considered that the definition of human rights by the international bodies mentioned above limits the validity of the guarantees of Åland's Swedish identity.<sup>79</sup>

In connection with EU membership in 1995, the Åland population's nationality guarantees were confirmed in international law and in the EU's primary legislation. This means that the implementation of the right of domicile, the right of real estate ownership and the right to practise business are not contrary to EU legislation.

Despite this, the principle of equal treatment and the principle of legal certainty have caused difficulties when implementing the guarantees that prevent unilingual Finnish businesses from being established in Åland. The difficulties surrounding this issue have forced the Åland Government to begin a political process that will, to a certain degree, define the prerequisites for the right to practice business, which also has its origin in the Åland nationality guarantees mentioned above.

## **The new Constitution weakens Åland's constitutional position**

The Åland autonomy is referred to in the new Finnish Constitution from 2000 as follows: "Åland has home rule in accordance with the Autonomy Act for Åland."<sup>80</sup> In the present

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<sup>78</sup> Utrikesutskottet (1990).

<sup>79</sup> It should here be noted that the convention on civic and political rights that the committee refers to was not referred to the Åland Parliament for approval, as required by the Autonomy Act.

<sup>80</sup> Finnish Constitution, article 120 (FFS 731/1999). See also articles 58 and 75.

Autonomy Act it is stated that the law may only be repealed or changed in accordance with the Constitution and with the consent of the Åland Parliament.

Up until the year 2000 the above quoted paragraph regarding the Åland Parliament's consent for changes to or abolishment of the Autonomy Act contained the word "interpreted". This was removed from the new Constitution. The Ministry of Justice also wanted the word removed from the Autonomy Act. The term "interpreted" belonged to a legal tradition from the Russian period which made it more or less impossible to make changes to the old Swedish Constitution that still applied in the Grand Duchy of Finland. The Ålanders saw the term as a safeguard, preventing the Supreme Court, the president or the Finnish Parliament's Constitutional Committee from interpreting the Autonomy Act in a way that could be restrictive for Åland. The Ministry of Justice responded that the term was obsolete and had no legal effect. Furthermore, it could not be applied to either the Supreme Court's or the president's tasks as defined by the Autonomy Act, or to the constitutional committee's control of the accordance of proposed Finnish laws with the Constitution. This argument was finally accepted by a majority in the Åland Parliament.<sup>81</sup>

The original Finnish law concerning the guarantees protecting the Ålanders' national identity (the so-called guarantee law)<sup>82</sup> was repealed at the same time that the Autonomy Act of 1951 was passed. Instead, the guarantees were included in the Autonomy Act and were thereby secured by the same ruling. However, as mentioned above, the right of complaint, with its significance in international law, was removed.

The guarantees of ethnic national identity were still constituted by the rights of domicile, of practising business, and of real estate acquisition, as well as the ban on providing public funding to schools with Finnish as the language of education. These three guarantees are constitutionally protected and can be seen as the Åland population's own civil liberties and rights (over and above the civil liberties and rights of the Finnish Constitution), a form of positive discrimination.

The constitutional protection for the rights of practising business and of real estate ownership have, at least in principle, been weakened due to the fact that the most fundamental regulations exist at the constitutional level,<sup>83</sup> while the relevant bases for the Åland Government's right to grant exceptions in specific cases are regulated in the Åland legislation. The intention was to make changes and adjustments that were workable, but in practice the Åland Parliament's competence has been limited by the legislative control's definition of the boundary between the Constitution's definition of civil liberties and rights for Finnish speakers and the guarantees of Swedish identity for the Åland population. Another limiting

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<sup>81</sup> Against the background of the constitutional committee's increased influence over the way in which the extent of the Autonomy Act is interpreted, it would have been best, from the Åland perspective, to have retained the institution "interpreted".

<sup>82</sup> See Jansson (2020, p. 12). The guarantee law originated in the above-mentioned, bilateral Åland Agreement. Its contents were legislated in a specific Finnish law that had the purpose of securing the guarantees concerning national identity included in the League decision of 1921.

<sup>83</sup> Which is the Finnish Parliament's area of competence, more on this in chapter 7 and 8.

factor is the UN convention on human rights - which was not referred to the Åland Parliament to receive its consent, but is instead considered to be general international law.

### **The development of legislative competence**

The residual principle was replaced in the Autonomy Act of 1951 by the still-current enumeration principle. The implementation of the first Autonomy Act through the Supreme Court's strict judgements regarding the limits of the autonomy's competence was codified in a catalogue of competences for respective parliaments, based on legislative areas, that was introduced in the new law. The list of well-defined areas of competence, together with a clearer section on the administration, were intended to remove the uncertainties inherent in terms such as "grounds for", a ruling in the first Autonomy Act that - besides significantly limiting the autonomy's scope for action within areas of its own legislation - also forced Åland at times to accept the subordination of its administrative decisions to a Finnish authority.<sup>84</sup>

Newly created legislative areas are divided according to "principles" in the respective competence paragraphs for the Finnish and Åland Parliaments. The area of administrative competence follows in principle the area of legislative competence. The competence catalogue was updated in 1991 but essentially retains the division of competences from the 1951 Act.

In the current Autonomy Act there is a list of legal areas that belong to the Finnish Parliament's competence but which are administered by Åland authorities implementing Finnish law. There is also a list of administrative measures that require Finnish authorities to confer with or allow the Åland Government to express its views before decisions are made that affect Åland.<sup>85</sup> The first Autonomy Act contained an equivalent ruling based on important areas of administration that, regardless of the Åland Parliament's fundamental residual competence, remained under the state's general administration.<sup>86</sup> The purpose was - rather than accommodate Åland's wishes regarding the transfer of competence - to impose on Finnish authorities the obligation to take into consideration Åland's wishes in decisions with significant consequences for the Åland economy or for Åland society in general.

The Åland Government has the power to issue decrees (regulatory power) in those cases where the Åland laws contain a mandate to delegate in an equivalent way to the Finnish Government. This is an important adjustment to an area that regularly provided grounds for dismissal in the legislative control.<sup>87</sup>

In the Autonomy Act of 1991 the president was given the right to only partially dismiss an Åland law. This was a practical improvement. It allowed the Supreme Court to exclude those sections or elements that it considered to be the Finnish state's competence and otherwise approve the law. It was then up to the Åland Government to pass the law in its "curtailed"

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<sup>84</sup> See also chapter 4, p. 32-33. For a more thorough analysis of the problem, see Jansson (2020).

<sup>85</sup> Åland Autonomy Act, article 30 (ÅFS 71/1991).

<sup>86</sup> Åland Autonomy Act, article 17 (FFS 124/1920).

<sup>87</sup> See Jansson (2020).



form or to totally refrain from passing it. This has meant that larger reform packages can come into force despite certain failings, which can then be quickly and simply rectified.<sup>88</sup>

As previously stated, the Finnish Supreme Court has followed the letter of the law in its judgement of Åland legislation, which has in practice imposed strict limits on the interpretation of Åland's areas of competence. One advantage has been that the Supreme Court's interpretations have proved to be stable and relatively predictable in a purely judicial sense. However, this has also led to an adherence to old praxis that does not take into consideration the purpose of the autonomy when passing judgement on new Åland legislation. Today's legislative control presupposes instead that the Åland Parliament and the Finnish Parliament update the Autonomy Act when the need arises, something that, judging by the experience of the few revisions of the Autonomy Act to date, is not always easy to achieve.

An illustrative example of the consequences of these problems is the Supreme Court's interpretation of the term "standardisation", which has at times undermined the Åland Parliament's competence and the purpose of the autonomy within various legislative areas.<sup>89</sup> The interpretive principle adopted by the Supreme Court has been to demand that many "standardised" labour-market contracts should apply in Åland. Many of these contracts are only available in Finnish, for example wage agreements and construction entrepreneur contracts. The standardised manuals within the contracting industry are often only in Finnish. The original wording of the Autonomy Act was "measures and dimensions", which referred to length and space measurements. The interpretation of this as "standardisation" is often used to reject legislation across several of the Åland Parliament's areas of competence, which is in practice counter-productive to the purpose of the autonomy.

Following the introduction of the new Finnish Constitution the Supreme Court has, in its control of Åland's legislation, to a certain degree implemented the Finnish Parliament's Constitutional Committee's recommendations on the accordance of Finnish laws with the Constitution. In the long run, this means that a Finnish, party political, parliamentary advisory committee can influence the interpretation of the Åland Parliament's competence - something that was not presumed in any of the Autonomy Acts.

### **Limited opportunity for a flexible development of the autonomy**

To renew and modernise the Autonomy Act is a complicated and extended political and judicial process. The formal process requires a decision by the Finnish Parliament according to the Constitution, i.e. with a two-thirds majority and by two successive parliaments, and with the Åland Parliament's consent. Before the formal process can begin, a unanimously approved proposal must be prepared by committees comprising politicians and public officials. This is formed into a proposition in which the Finnish state's political evaluations, constitutional issues, international aspects, and the question of the guarantees of the Ålanders' national identity are considered. The earlier revisions of the Autonomy Act have

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<sup>88</sup> Åland Autonomy Act, article 19 (ÅFS 71/1991).

<sup>89</sup> Åland Autonomy Act, article 27, section 1, sub-section 19.

each taken about 20 years to complete. The current revision was begun in 2010 and has not yet (2021) been completed.

The 1991 Autonomy Act included a so-called B-list of state competences that could be transferred to Åland through a standard act of the Finnish Parliament and with the consent of the Åland Parliament. The list includes the population register and certain civil rights areas of legislation that can be significant for the Åland business sector. This means that legislative areas that are of interest to the Åland Parliament can be transferred without having to make changes to the Autonomy Act. So far, this possibility has not been exploited, nor has it (knowingly) been tested.

### **Continued state control of taxation and the economy**

Åland's competence regarding taxation has not changed significantly since the first Autonomy Act. The autonomy's right to half of the land tax was repealed in 1929 and replaced with a stated sum, the so-called "settlement".<sup>90</sup> Åland's wishes for broader competences in taxation have been regularly rejected, and the wording of the law regarding taxation competence has mostly been retained in its original form. Business and entertainment taxation, extra taxation, lottery taxation and municipal taxation still exist, while certain property taxes and land tax have been repealed in Finland.

The 1951 Autonomy Act saw the earlier practice of a three-year settlement converted to an annual settlement. In the Autonomy Act of 1991 the autonomy received, for the first time, free budgeting rights through the annual transfer to Åland of a "lump sum". The system was instigated by the so-called Olsson Committee<sup>91</sup> and was based on an average of the state payments to Åland from the years 1978 to 1982 in relation to income in the state budget. The ratio (in percent) was set at 0.48, which more or less matches the proportion of the Åland population relative to the entire population of Finland. The settlement was implemented by the Åland Delegation, which had previously used the same ratio when referring to the main areas of the budget.

In the Finnish Government's proposition for a new Autonomy Act the coefficient was reduced to 0.45, guaranteeing that Åland would not receive a larger sum than the earlier taxation system had provided. In order to compensate for the fact that Åland's wishes on self-taxation were not fulfilled, a form of taxation remuneration was introduced, which would apply if the Åland tax revenue was substantially greater than the Finnish.

One of the main goals of the Åland initiative to revise the Autonomy Act of 1991 was to introduce the sort of full tax jurisdiction that applies to several European autonomies, including the Nordic sister autonomies of the Faroe Islands and Greenland.<sup>92</sup> The so-called Aalto Committee, which was appointed by the Ministry of Justice to more closely review Åland's wishes, considered that "a transferral of [the state's] taxation rights [to the autonomy] presupposes that the problems regarding tax competition, EU legislation and

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<sup>90</sup> The term "settlement" refers here to the finalised sum of the annual state payment to Åland to finance the costs of the autonomy.

<sup>91</sup> Statsrådet (1987).

<sup>92</sup> Åland's suggestions and wishes are explained and motivated in Ålands landskapsregering (2010; 2013).

international relations are resolved.”<sup>93</sup> The committee’s final report included an extensive list from the Ministry of Finance’s taxation department with all of the problems that, according to the ministry, would arise if Åland was given competence in the area of taxation. Åland’s wishes regarding taxation rights according to the Faroese model were not viewed positively by the committee.

In 2020 the ongoing work with the revision of the Autonomy Act resulted in the economic package being divided from the larger negotiation package, and the Autonomy Act was changed so that the grounds for settlement increased to 0.47 (%). A clearer link between the state transfer and the basis of the Åland taxation was also included in the reform. The reason for prioritising the handling of the financial system was the politically highly prioritised, regional healthcare reform then taking place in Finland. The reform made changes to the budget structure in a way that would have substantially increased the remuneration of tax revenue to Åland if the old system of financing the autonomy had been retained. This was not deemed acceptable by the Finnish state.

Increased taxation competence for Åland or greater economic scope for action was, however, not part of the deal.<sup>94</sup> Municipal taxation is still the only significant taxation area that the Åland Parliament controls. However, the municipalities’ statutory functions make it difficult to adapt taxation legislation to fit the Åland social and business structure. A number of very limited tax-breaks for companies and individuals were introduced. As will be shown later in this report, Åland’s scope for action is, in practice, strongly limited by the integration of taxation in the overriding system of Finnish state taxation.

According to the Autonomy Act, the Åland Parliament has the right to receive an increased budgetary allocation for unusually large, one-off costs, as well as funding to cover exceptional circumstances. An example of the former is the submarine, high-voltage cable connecting Åland to Sweden and, later, to Finland. This form of funding was previously known as “extraordinary expenditure” and is applied only when the Åland Government and the Ministry of Finance are in agreement over the definition of an “extraordinary” expenditure.<sup>95</sup>

An “extra” source of income for the Åland Parliament is the Åland Gaming Company (*Ålands penningautomatförening r.f.*) or PAF, which for many years has financed Åland’s third sector (non-profit-making social and community activities) through revenue from its gaming business. PAF has to a certain degree also contributed financially to the autonomy’s budget. PAF has successfully developed on-line gaming and operates both internationally and nationally.<sup>96</sup>

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<sup>93</sup> Justitieministeriet (2013, p. 63).

<sup>94</sup> In practice, this meant a deterioration of the autonomy’s economic security (from the earlier link to the state’s tax income to an increased dependence on the taxes generated in Åland) without a corresponding increase in influence over the tax base/tax rates and, thereby, the ability to pursue a more active tax and financial policy. See also ÅSUB (2019).

<sup>95</sup> Extra budget allocation is applied in practice only for larger, infrastructural, one-off investments, which are deemed unreasonable for Åland to bear.

<sup>96</sup> The business operation has at times been strongly questioned in Finland, with reference to the fact that it competes with the Finnish equivalent (Veikkaus) and other state-owned gaming companies. The lottery tax is an Åland competence that generates relatively little income.

### **Weak international competence and visibility**

Åland has a low profile and low visibility amongst international organisations and their areas of co-operation. When the League of Nations discussed the Åland Question and resolved it in a way that was widely seen as a successful model for conflict solution, Åland became an oft-quoted example within international law and could be found in the majority of standard works in the subject. However, international interest for Åland diminished over time, especially when nothing happened to give the Ålanders cause to complain to Geneva.

Another reason for the gradual reduction of the autonomy's international visibility is that Åland lacks "treating-making capacity", which is a basic prerequisite for entering into international agreements. Åland does have the possibility to initiate and take part in negotiations regarding international agreements that concern Åland, but all negotiations take place in the name of Finland, and Åland's ability to play an active role or influence the discussions is generally limited. Åland's participation in various international joint committees (including those that are not only open to sovereign states, e.g. within sport and culture) is also very limited.

The Nordic co-operation is an exception to the general rule of Åland's lack of competence and limited visibility in international affairs. The Faroe Islands, supported by Denmark, pursued the question of the autonomous parliaments' right to take part in the Nordic Council, which was granted in 1970. When Greenland received autonomy several years later it was also admitted to the Nordic co-operation with the same conditions as Åland and the Faroes.

Åland joined the EU at the same time as Finland when it approved the treaty of accession in 1994. An addition to the treaty was the so-called Åland Protocol, which described in detail Åland's autonomous position and the guarantees regarding its ethnic identity regulated by international law. These are now included in the EU's primary legislation. However, Åland does not have a seat in the EU Parliament despite the fact that Åland has delegated the power of legislation to the EU's institutions.

In order to monitor its interests in Brussels, Åland has a representative, chargé d'affaires, at Finland's permanent representation to the EU, with the right to take part in the Union's council meetings. The official of the Åland Government acts as the Åland Parliament's representative in the European Committee of the Regions' expert network for subsidiarity questions. Åland also has the right to take part in the European Union's council meetings when the agenda concerns Åland. Furthermore, Åland's members of parliament take part in CALPER, the Baltic Sea co-operation, and the EU's Committee of the Regions.

### **Åland successes: a national flag, stamps and Internet domain**

Åland has had some successes with regard to internationally (and nationally) significant symbols. One of the most important symbols in this context is a national flag. In 1922, a blue-yellow-blue Åland flag was created but it lacked legal approval. This flag was used until 1935 when it was forbidden by Finnish authorities. The Åland Parliament passed a law on the Åland flag in 1952 but it was dismissed by the Finnish president because the flag was considered to

bear too great a resemblance to the Swedish flag. The blue-yellow-red Åland flag of today was approved in 1954.

Another success came in 1984, when, following long negotiations with representatives of the Finnish state, the first Åland stamps were issued. In the beginning, Finnish authorities were very reluctant to allow Åland to join the Universal Postal Union (UPU) and issue its own stamps.<sup>97</sup> Here, again, the Danish autonomies were of significant help as examples of autonomous regions with their own postal service and stamps.

The latest Åland success of this sort is the Åland top-level domain .ax. This was the result of preparatory work conducted within ISO (International Organization for Standardization), and has been in use since 2006 when it was approved by the international body responsible for registering Internet domains.<sup>98</sup>

### **The Åland autonomy: status and scope for action 2021**

The basis of the Åland autonomy in international law is still strong, at least in theory. Sovereignty over Åland was granted dependent on the provision of guarantees concerning the Åland population's original Swedish identity. The guarantees were drawn up by Sweden and Finland together, and were included in the League of Nations' decision in the question of sovereignty. The guarantees of the Åland people's national identity are today materialised in the rights of domicile, of practising business, and of real estate acquisition.

Finland cannot unilaterally change or repeal the Autonomy Act. However, following the entering into force of the new Finnish Constitution of 2000, a judicial and political discussion has arisen regarding how the Constitution's charter on civil rights and liberties, and the Finnish Parliament's Constitutional Committee's increased authority, can affect the Åland Parliament's legislation.

The compatibility of the Autonomy Act's guarantees of national identity with the current views on human rights have not only been called into question by the nationalistic right wing (The True Finns Party) but also by the Finnish Parliament's Foreign Affairs Committee.<sup>99</sup> The Finnish Chancellor of Justice has questioned if the motives of the bill in the suggestion for a new Autonomy Act are sufficiently clear on the fact that changes to the Finnish Constitution concerning basic civil rights and liberties shall apply in Åland only if the Åland Parliament approves them.<sup>100</sup>

The Åland Parliament does have legislative competence within its own legal areas as defined by the Autonomy Act. However, the Åland catalogue of competences is much more limited than the Finnish equivalent. This applies not least to the areas of economic and business

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<sup>97</sup> Mattsson-Eklund (1998, pp. 107-110).

<sup>98</sup> However, the AX-code has not been approved as a country code, unlike the Nordic autonomies of the Faroes and Greenland. This also applies to the phone code, of great importance within all digitally-based telecommunications (on the Internet often shown together with a flag), where Åland is part of the Finnish +358.

<sup>99</sup> Utrikesutskottet (1990).

<sup>100</sup> Justitiekanslerämbetet (2017).

politics, including competence over taxation, which is substantially reserved for the Finnish Parliament and state.

Åland's legal room for manoeuvre is further limited by a legislative control that, through the use of a "letter of the law" interpretive principle, has difficulty adjusting the definitions of the home rule's competences to the general and ever-changing societal and legislative development. The Åland Delegation, in which Åland has two representatives of a total of five, gives its opinion on the compliance of all Åland laws with the Autonomy Act, but the final word is given to the Finnish president who, with the support of an opinion from the Supreme Court (where Åland representation is lacking), decides whether an Åland law shall be passed or defeated.

The possibilities for the autonomy's future development are thus limited by a combination of a constitutional lockdown and strict legislative control, which in this context is an aggravating factor. The formal process to revise the Autonomy Act takes many years, sometimes even decades, to complete. Experience shows that the political process, both in Åland and in Finland, takes just as long, if not longer.

Finally, Åland has a limited international competence and visibility. Despite the autonomy's basis in international law, its role in today's international co-operation is very limited. This is largely the result of Åland's inability to enter into international agreements and to pursue foreign policy, in general. The only significant exception to this is Åland's own official at the Finnish permanent representation in Brussels, as well as the Åland membership (together with the two Danish autonomies) of the Nordic co-operation.

## 6. The Åland autonomy's establishment: an international comparison

The Åland autonomy is not unique. A significant number of similar territorial autonomies exist today. In Europe, it is possible to identify around twenty regions with varying degrees of political and administrative home rule,<sup>101</sup> depending on how the line between a normal decentralisation of decision-making and a more qualified territorial autonomy is drawn. There is, therefore, a sufficiently large, empirical body of material to allow for an appraisal of the Åland autonomy in comparison with similar autonomies around the world, and not least in the geographically, constitutionally and politically adjacent autonomies of Europe/the EU and the Nordic countries.

### Six European reference autonomies

In the next two chapters, the Åland autonomy's extent and characteristics are more closely examined in relation to a number of equivalent, European "reference autonomies".<sup>102</sup> The status of these regions as autonomous territories can be considered the constant, while their respective legal positions and scope for action within a number of areas significant for the development of home rule are the variables and the main focus of the comparative analysis. The European autonomies with which Åland's legal position and scope for action will be compared are *the Faroe Islands, South Tyrol, the Basque Country, the Isle of Man, Gibraltar and Flanders*.<sup>103</sup> The Basque Country, South Tyrol and Flanders belong to the European Union (EU), as did Gibraltar prior to Brexit, whereas the Faroe Islands and the Isle of Man lie outside the EU.

Five of the reference autonomies are similar to Åland in that they differ in political and legal terms from other parts of their respective state's national territory. This is the case for the British autonomies of Gibraltar and the Isle of Man, the Danish autonomy of the Faroe Islands, and the Spanish and Italian autonomies of the Basque Country and South Tyrol. These five territories together cover some of the most important variations in the autonomy models that exist in today's Europe: (i) the British and Danish autonomies with their strong political scope for action in contrast to their weak constitutional position, (ii) the constitutionally well-founded but politically blocked autonomies in Spain, and (iii) the Italian model of autonomy, with its relatively problem-free development of self-determination within the limits of a

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<sup>101</sup> See e.g. Ackrén (2009).

<sup>102</sup> The summary in this chapter and the following one, describing the character and extent of the reference autonomies' home rule, is based on Lindström (2020). A more extensive description and comparative analysis of these autonomies can be found in the referenced report's chapter 4 (Faroe Islands), chapter 5 (South Tyrol), chapter 6 (Basque Country), chapter 7 (Isle of Man), chapter 8 (Gibraltar) and chapter 9 (Flanders).

<sup>103</sup> For a more thorough presentation of this choice, see Lindström (2020). The choice of reference autonomies is not obvious. The original intention was to include other autonomies, such as the Channel Islands (which was used as a reference autonomy in the preparation of the first Autonomy Act, see chapter 4 above) and Scotland. These were not included due to communication problems caused by the coronavirus pandemic, and were replaced by Gibraltar and the Isle of Man. However, no choice of reference regions is optimal in the way that all of their qualities and characteristics are of equal relevance for Åland.

flexible constitutional framework, placing it somewhere between the British/Danish models and the Spanish.

The sixth reference autonomy, Flanders, can be seen as a mixture of a regional autonomy and a federal state in an ever more federal Belgium. That Flanders has been included in this comparative study is motivated by its distinctive development from a weak Flemish home rule in a unitary state dominated by the French language, to a successful and strong political player in the development of an ever more decentralised Belgian state.<sup>104</sup> However, it should be noted that the relevance of Flanders in any comparison with Åland tends to be lower than that of the other five reference autonomies.

### **The geopolitical and historical background**

It is possible to trace certain recurring historical, international and geopolitical factors behind the establishment of the six reference autonomies, despite their otherwise varying historical and political contexts. The same (or at least closely related) factors can be traced in the establishment of many other territorial autonomies around the world, indicating that these factors are reasonably representative.<sup>105</sup>

Four basic *socio-structural factors* can be identified behind the emergence of the six reference autonomies, namely:

- A language/ethnicity that deviates from the majority of the population
- Historically separate jurisdictions
- Geographical separation, insular location
- Contested international borders/sovereignty

The first factor - language/ethnicity that differs from that of the “mother-state’s” majority population - is one of the most common underlying reasons for the existence of the special political arrangements that characterise Europe’s territorial autonomies. The linguistic factor plays a central role in four of the six reference autonomies: South Tyrol, the Basque Country, the Faroe Islands and Flanders. The existence of a language that differs from that of the national majority has, in all these cases, been one of the most important incentives behind the establishment of the autonomy and political self-determination that they enjoy today.

The second factor that can be recognised in several of the studied autonomies is often closely linked to language though differing in character. This is a long history - sometimes reaching back to the Viking or Early Medieval Period - of being separate jurisdictions with quasi-independent positions outside the central territories that today make up their respective states. This is relevant for the Faroe Islands, the Basque Country and the Isle of Man. Gibraltar

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<sup>104</sup> For a closer examination of Flanders’ divergent (in relation to the other five reference autonomies) federal characteristics, see chapter 9 in Lindström (2020).

<sup>105</sup> See, e.g. Bahcheli et al (2004), Ackrén (2009), Hepburn & Baldacchino (2013), Turp & Sanjaume-Calvet (2016) and Weitz (2020).



can also be included in this group, despite the fact that its colonial-military background history differs somewhat from that of the other autonomies.<sup>106</sup>

A third important background factor is geographical separation and/or an insular location that often, but not always, characterises this type of regional autonomy. This “autonomy-promoting” factor is significant for half of our six reference autonomies, namely the Faroe Islands, the Isle of Man and Gibraltar.

A fourth background factor that often lies behind the establishment of some form of political autonomy involves the territory itself being either in an internationally contested borderzone or the object of conflicting territorial claims. Typical examples of this are Gibraltar (UK/Spain) and South Tyrol (Italy/Austria), but even in the case of Flanders there is a background history of disagreement over borders and territorial claims (Belgium/Netherlands).

### **Factors behind the establishment of the Åland autonomy**

As described in chapters 3 and 4 in this report, the history of the establishment of the Åland autonomy has several points in common with the background factors that have been decisive for our reference autonomies. The driving forces behind its establishment in the early 1920s are closely related to three of the four geopolitical and socio-structural conditions that are the basis of the formation of the six European autonomies referred to above.

*The linguistic background* - a language and culture that differs from that of the majority in the “mother state” - is a factor that Åland shares with South Tyrol, the Basque Country, the Faroe Islands and Flanders. The similarity with South Tyrol is especially clear. In both cases the autonomous territory’s “deviating” language is the majority language of a neighbouring country, in the case of Åland Sweden/Swedish, and in the case of South Tyrol Austria/German. The similarity extends also to Flanders, whose Flemish language is shared with its immediate neighbour, the Netherlands. The linguistic-cultural background factor also applies to the Faroe Islands and the Basque Country, even if their respective languages are not shared with a larger and dominant linguistic group in a neighbouring country.

The *geographical background factor*, in other words, the insular location that has played a significant role for the Danish and British reference autonomies, has also influenced the conditions behind the establishment of the Åland autonomy.

The context of *international border conflicts* is a relevant background factor in the case of Åland, where the struggle between Sweden and Finland over the territorial sovereignty of the Åland Islands was of great importance in the establishment of the autonomy. Åland’s position has a lot in common with similar border problems in the cases of South Tyrol and Gibraltar, and to a certain extent even Flanders.

The fourth common factor behind many of the world’s territorial autonomies - a background history as a *quasi-independent jurisdiction* - is, however, of less significance in the case of Åland. Unlike the Danish and British reference autonomies, and also the Basque Country,

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<sup>106</sup> See chapter 8 in Lindström (2020).

Åland has not formed a recognisable autonomous jurisdiction prior to the establishing of the autonomy in the early 1920s. This is true both for Åland's original status as an integrated part of Sweden and when Åland was a Swedish-speaking region in the multi-ethnic Russian Empire.

There is, however, another closely related factor in the historical background of the Åland autonomy. This is the fact that Åland has, since the mid-1800s, enjoyed what could be called an "exceptional military status". The Åland Islands were demilitarised in a convention resulting from the Paris Peace Conference of 1856 that ended the Crimean War.<sup>107</sup> This relatively unique status was reaffirmed by the League of Nations in 1921, and meant that the newly established Finnish state could not exercise full military control over the archipelago, an important factor in any state's territorial sovereignty. Otherwise, demilitarisation has a fairly weak formal connection with the Åland autonomy, but the exceptional international status that it afforded (in combination with a relatively unstable geopolitical and military-political situation in the Baltic Sea region) probably played a significant role in the political dealings behind the Åland autonomy's establishment.

### **Common background - different outcomes**

We can therefore state that there are a number of factors, internal as well as external, common to the establishment of the Åland autonomy and the six European reference autonomies.

The most important, internal background factors were the regionally deviating culture (language, ethnicity) and the presence, to varying degrees, of separatistic (the Faroe Islands and the Basque Country) or secessionistic (Åland, South Tyrol) movements - often in combination with a more or less insular geographical location.

Of the external factors, one of the most important is the international and geopolitical position in a conflict zone created by different states' territorial claims and/or security interests. Also of significance is the fact that several of the studied territories have previously had the status of separate (administrative/political) units on the periphery of the state formation that they are today connected to.

These common background factors have resulted in some form of autonomy for the concerned territories. However, a closer study of the resulting autonomy models reveals not only common elements, but also significant differences. The actual form and material contents of the various autonomy models is to a great degree dependent on interaction with the "host state", not least the political and constitutional framework that this interaction provides for the autonomy. It is to these variations in the fundamental legal and political prerequisites/conditions provided by the respective "host" states - and the varying forms of autonomy that exist as a result - that we turn in the next chapter.

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<sup>107</sup> Cf. chapter 3 in this report.

## 7. A European perspective on Åland's legal position and scope for action

A closer study of the more concrete forms of our European and Nordic reference autonomies reveals a number of fundamental factors of great, though often varying, significance for each autonomy's legal position and scope for political action, namely:

- Constitutional foundation
- Rules for changes to competence
- Legislative control
- Implementation of the current Autonomy Act
- Competence exclusivity v. mixed competences
- Validity of state legislation within the autonomy's territory
- EU relations and international competence
- Financing and taxation
- Bilateral v. unilateral partnership

We should note that these nine “autonomy factors” - hardly surprisingly - to a large extent coincide with the factors that were identified and analysed in chapters 4 and 5 as important for the creation of the long-term conditions necessary for the Åland autonomy's development.

In the following text, the effect of these factors on the Åland autonomy's legal position and scope for action is summarised and discussed in relation to the six reference autonomies.<sup>108</sup>

### Constitutional foundation - an Åland strength

The Åland autonomy's constitutional position within Finland, in combination with its status in international law, its international background and the territory's demilitarised status, place Åland in the same category as other, constitutionally recognised European autonomies. In this respect, the Åland autonomy's legal security is, at least, equivalent to that of Flanders, South Tyrol and the Basque Country. The international aspects of the Åland autonomy's establishment, together with demilitarisation, further reinforce Åland's legal position compared with the other three territories.<sup>109</sup>

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<sup>108</sup> As already stated, this comparison is based on Lindström (2020), where each of the six European reference autonomies is analysed with focus on its constitutional status, its legal competence and its political scope for action. See the report for a more detailed presentation, including references and sources. With regard to the equivalent material concerning the Åland autonomy's competence and scope for action, see chapters 3-5 in this report.

<sup>109</sup> It should be noted that South Tyrol's autonomy has a similar international dimension to that of Åland within the context of bilateral agreements between Italy and Austria. The treaty's connection to UN-led negotiations strengthens this aspect of broader, international commitment. See chapter 5 in Lindström (2020).

The Danish and British reference autonomies do not share the same, strong constitutional position as Åland. Nevertheless, Gibraltar, with its constitutional legislation, and the legally and politically ever-more autonomous Isle of Man and Faroe Islands, can, at least in practical terms, be seen to have a position comparable to that of Åland.<sup>110</sup>

The strength and scope for action that Åland's constitutional position implies is nevertheless limited by several factors. According to the autonomy's original intentions, Åland has the possibility to adapt its legislation to fit its own needs and specific conditions. However, this possibility has been limited by more extensive and detailed regulation in the new Finnish Constitution of 2000, and by an extended interpretation of the civil rights and liberties in the new Constitution by the Finnish Supreme Court and the Finnish Parliament's Constitutional Committee.<sup>111</sup> Thus, the regulations in the Constitution have subsequently reduced the legal scope for action that the present Autonomy Act was intended to secure.<sup>112</sup> The Autonomy Act's limitations with regard to Åland's competence within EU co-operation and in relation to EU legislation, has also contributed to the reduction of legislative scope in recent decades.<sup>113</sup>

Another limiting factor is the large number of administrative and political areas with shared competence that are handled through so-called "form-legislation" (legislation by copying a Finnish law), with the result being that legislative competence, in practice, is limited even within those areas where Åland has the right to regulate.<sup>114</sup>

### **Complex process associated with changes to the current Autonomy Act**

For both Åland and for the six reference autonomies, any changes to the autonomy's legislative competence require a political and legal process, the result of which must be approved by both parties (autonomy and state).<sup>115</sup> A more fundamental revision of the

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<sup>110</sup> With regard to international authorisation, these autonomies do not have the same security as provided for the Åland autonomy by its origin in the League of Nations. In these cases the reference is rather to common law that has the character of international law. However, several times during recent decades, Finland has communicated that it considers the earlier international commitments to have been replaced by a commitment that is more unilaterally national (see e.g. Justitieministeriet 2013), in which case giving Åland a similar position in international law to that of the Faroe Islands. This legal standpoint has, however, been repudiated by several leading international law scholars (Hannikainen 2004; Spiliopoulou Åkermark 2014).

<sup>111</sup> The Constitution of 2000 gives the Finnish Parliament's Constitutional Committee, which is a political body, a significantly larger role in regulating Åland legislation than was originally intended.

<sup>112</sup> Examples of this in recent years include blocked laws regarding reduced voting age in municipal elections and a reduction in the maximum level of blood alcohol content permitted in Åland traffic (Högsta Domstolen 2015; 2017).

<sup>113</sup> See below on Åland's scope for action regarding the EU. It should be noted that the EU, in the preamble to Protocol No. 2 in Finland's accession treaty from 1994, specifically motivates the Åland exceptions with reference to the territory's "special status in international law", something that - *ceteris paribus* - must be considered to strengthen Åland's position in international law.

<sup>114</sup> "Form-legislation", i.e. the copying of Finnish legislation, has become more and more extensively adopted, and often includes a type of pre-approval that future amendments to the relevant parliamentary law immediately apply (without the Åland Parliament's approval) to Åland.

<sup>115</sup> This is also true for the Isle of Man and Gibraltar, even if the process is somewhat different due to the lack of the type of constitutional connection in these British autonomies that applies to the other autonomies in this study.

autonomies' competences tends, therefore, to be of such complexity that major revisions are seldom attempted (the Faroe Islands, Gibraltar), or that the original Autonomy Act still applies in more or less unchanged form (the Basque Country, South Tyrol). Despite this, several of our reference autonomies have undergone significant legal and political development.<sup>116</sup> The positive development has been achieved through a gradual, *de facto* broadening of the autonomies' competences, sometimes exceeding that which is regulated in the respective Autonomy Act - something that has led to greater or lesser retrospective revisions (Faroe Islands, Gibraltar, South Tyrol). Flanders is the exception, with a large number of constitutional reforms, which, during recent decades, has led to several significant extensions to legislative competence.

Åland's position regarding the formal regulations for revising the current Autonomy Act is comparable to the norm for this type of European autonomy. Competence cannot be reduced without a revision of the Autonomy Act, which requires both a qualified majority in the Finnish Parliament and the consent of the Åland Parliament, contributing to the fact that the Autonomy Act has only seen two significant revisions in the past 100 years.<sup>117</sup> The Åland Parliament also has the right of initiative with regard to changes to the current Autonomy Act, which allows Åland to initiate necessary changes to the allocation of legislative competence between the autonomy and the state.

However, it should be noted that any revision to the current division of competences initiated by Åland is led by the state, which is responsible for all preparatory work and therefore, in practice, decides the (political) framework of this work. Moreover, the result must be approved by the Finnish Parliament. This limits Åland's real scope for action in both the preparatory work and the legal bill's final contents.

Åland's only real possibility of applying pressure is a form of negative veto right - any suggestion concerning a revised/new Autonomy Act that has not received the consent of the Åland Parliament cannot enter into force. For this reason, the structure of home rule tends to prioritise a preservation of *status quo* rather than a more flexible development of the autonomy based on the challenges and new needs of a continuously evolving society.

### **Strict legislative control with limited Åland influence**

After a law has been passed by the Åland Parliament, but before it can enter into force, it is submitted to a process of legislative control, where the main bodies - in addition to Finland's president - are the Supreme Court, the Åland Delegation, the Ministry of Justice, and now

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<sup>116</sup> The exception is the Basque Country, where the political blocking of the autonomy's development by the Spanish state has been significant. For further information, see chapter 6 in Lindström (2020).

<sup>117</sup> Limited changes have been made under exceptional circumstances, such as when the new Finnish Constitution entered into force (2000) and in connection with EU membership (1995). Certain minor changes have been made in connection with Finland signing various international treaties.

also, to a certain degree, the Finnish Parliament's Constitutional Committee.<sup>118</sup> The primary purpose of the control is to ensure that new legislation does not encroach on the Finnish Parliament's areas of competence. In recent decades, this control of Åland laws has been extended to include the legislation's relationship to the Finnish Constitution and to EU legislation.<sup>119</sup> In certain cases the process of control has been widened from the strict examination of areas of competence to include the Åland legislation's goals and material contents. During the past two decades this has resulted in an increase in the number of Åland laws and individual regulations that have been blocked by the legislative control with reference to EU legislation and the Finnish Constitution.<sup>120</sup>

It is important to note here that the decision on whether a control of legislative competence should be conducted is taken by the Ministry of Justice, which, following the Åland Delegation's statement, decides if the Supreme Court should give its opinion regarding the law in question. Even in those cases where the Supreme Court has not been heard, the Finnish president can request the Supreme Court's opinion. Therefore, both the Finnish Constitution and the Autonomy Act give the president the possibility - though no obligation - to request an opinion from the Supreme Court. Only if the president wishes to repeal a law is it obligatory to first request the Supreme Court's opinion. The control is, in the majority of cases, voluntary, which is also the case for Finnish parliamentary legislation. However, the autonomy's legislation is more frequently, and more closely, subjected to varying degrees of control before being passed by the president. An equivalent praxis to ensure that Finnish parliamentary laws do not encroach on the autonomy's areas of competence does not exist.<sup>121</sup>

A comparable system of legislative control is not in force in our reference autonomies. However, in the British autonomies a ratification by the head of state is required before legislation can enter into force. This is more a routine formality than a fundamental constitutional control. With regard to the Faroe Islands, South Tyrol and the Basque Country, there is no formal review prior to the entering into force of laws that the autonomous parliament has passed. However, it is possible to submit the autonomies' legislation to a form of constitutional review in retrospect, but this is only done if a competent party has announced their dissatisfaction with the law. This sort of retrospective review can lead to a law being repealed.

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<sup>118</sup> Strictly speaking, the Finnish Parliament's Constitutional Committee is not one of the legislative control's main bodies because it does not have a formal role in the interpretation of the limits of Åland's competence. Despite this, the committee's verdict has been included (by the Supreme Court) as an important legal source in its control of Åland legislation. For a further description of the system of control of Åland legislation, as well as its results in the form of blocked legislation, see Jansson (2020) and Jansson & Lindström (2021).

<sup>119</sup> The process of control with regard to EU legislation has been included by the Supreme Court, rather than it being based on regulations in the Autonomy Act.

<sup>120</sup> See Jansson (2020).

<sup>121</sup> The relationship between Åland and Finnish legislation with regard to legislative control is, in other words, asymmetric (Suksi 2015).

The federal characteristics of the Belgian state formation mean that Flanders differs in this respect - in relation to Åland and to all of the other reference autonomies. Belgian regulations demand a constitutional review of all legislation, both at the level of the state and that of the autonomous Flanders.

### **Independent implementation of the Autonomy Act - with certain exceptions**

The regulations surrounding how current Autonomy Acts are implemented in a more concrete/material legislation affect the autonomy's effective scope for action. The main rule amongst the six reference autonomies is that responsibility lies with the region, whose parliament takes the initiative to make its own laws within the framework of its competence and without state interference.

This also applies to Åland, which, according to the current Autonomy Act, has the right to make its own laws within the framework of its areas of competence. But even if this is normally the case, it is not entirely true. Thus, compared with several of the reference autonomies, Åland has a considerably more limited catalogue of legislative competence. In many cases this, combined with strict legislative control, reduces the possibilities for independent legislation based on Åland's own needs and particular circumstances.

Åland also lacks competence in several important areas of legislation (including civil law, public and private procedural law, labour and taxation legislation, and larger areas of economic policy-making and economic legislation). This affects the conditions for legislation, even within given areas of competence, in a way that reduces the autonomy's scope for action.<sup>122</sup> This can easily result in a law, the content of which is only partially based on Åland competence - or alternatively a direct transcription of the equivalent Finnish legislation.<sup>123</sup>

South Tyrol and the Basque Country represent interesting cases of how the current autonomy is implemented. A commission, jointly appointed by the autonomy and the state, decides the framework of the legislation that is allowed according to the current Autonomy Act.<sup>124</sup> Legislation is preceded by a bilateral agreement regarding the more concrete interpretation (in the form of a framework law) of the Autonomy Act's contents.<sup>125</sup>

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<sup>122</sup> For a more detailed discussion of the effects of the limited extent of legislative competence, see the next chapter, pp. 65-66.

<sup>123</sup> The previously mentioned "form-legislation". An (unintentional) effect of this is that the greater the number of copies of Finnish legislation, the greater the budget volume that is tied down administering these laws. And the autonomy's capacity to make its own, differing legislation is reduced to an equivalent degree.

<sup>124</sup> The commission is jointly appointed by state and autonomy according to the bilateral principles that are established in the respective Autonomy Acts. Neither of the two parties has a majority in the commission. See chapters 5 and 6 in Lindström (2020).

<sup>125</sup> Despite the similar setup in each autonomy of a bilaterally appointed commission to provide a common interpretation of the Autonomy Act, this has led to varying prerequisites for the implementation of the Basque (restrictive) and the Tyrolean (permissive) competences. Cf. chapters 5 and 6 in Lindström (2020).

## Exclusivity and grey areas in the division of competences

Another factor in the legal setup that affects the development of home rule and its scope for action is the degree of exclusivity between the autonomy's and the state's various legislative and political areas. With regard to our reference autonomies, legislative competence is generally divided and exclusive. In principle, overlapping areas of competence are not permitted. The legislative areas of each respective party are so defined as to avoid - or at least minimise - any overlaps and interpretative disputes.

This is particularly so for Flanders, with a very strict division between the federal and the regional areas of competence. The Danish and British autonomies also exhibit, as a rule, clear competence exclusivity. However, this does not apply in full to external (international) questions, where areas of competence often overlap, leading to different forms of bilateral co-operation between autonomy and state. In principle, competence exclusivity also applies in South Tyrol and the Basque Country. However, the setup of both the division of competences and the way in which it is implemented is rather complicated and can easily lead to problems and interpretative disputes. Especially in the case of the Basque Country, this has resulted in both conflict over areas of competence and blocked home-rule legislation.

Competence exclusivity is also the leading principle in the case of Åland. The objective of the Autonomy Act's handling of areas of competence is that the legislative areas of the Finnish Parliament and the Åland Parliament shall be, as far as possible, mutually exclusive. This also applies to the administration. The problem is that there are - despite the principle of exclusivity - a number of legal areas with mixed competence, where uncertainties and conflicts can easily arise during the legislative process.

From experience, it is the state's interests, and accordingly the Finnish Parliament's competence, that tend to be prioritised by this type of mixed/uncertain division of competence. This applies not least to legislative areas that have emerged since EU membership. In addition, similar grey areas, with uncertainties and/or overlapping legislative areas, exist within other, more internal, political and legislative areas, for example within the educational sector.<sup>126</sup>

The fact that the Åland competence has a limited material content when compared with several of the reference autonomies, reinforces the negative consequences for home rule of such grey areas. The lack of competence within several of the more fundamental legislative areas, which in practice also affects the conditions for legislation within areas of Åland competence, tends to give Finnish legislation priority over the autonomy's legislative ambitions.

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<sup>126</sup> Moreover, the general development of society and technology continuously creates new legislative areas with - from an Åland perspective - problematic division of competence. A good example is the legislative area "standardisation" (Finnish parliamentary competence), which originates in "measures and dimensions" but nowadays affects several legal areas where Åland has competence. Cf. chapter 5, p. 40.



## **Finnish legislation applies also to Åland**

A question that is related to the division of competence is the validity or otherwise of state legislation within the political areas where the autonomy in question is not the competent legislator. In Åland's case, Finnish legislation automatically enters into force in those areas that, according to the Autonomy Act, are within the Finnish Parliament's competence. This is similar to Flanders, South Tyrol and the Basque Country, but differs from the Faroe Islands and the British autonomies. And as previously stated, Finnish legislation is not subjected to the same sort of strict control of competence as the Åland Parliament's legislation.

The Åland Parliament may propose a motion in the Finnish Parliament, and according to the Autonomy Act Åland has the right to be heard in questions of particular significance for home rule. Åland can also influence legislation through its single seat in the Finnish Parliament (of a total of 200 seats).<sup>127</sup> Even so, the real effect that this has on Finnish legislation is, as a rule, limited.<sup>128</sup> There are a number of regulations in the Autonomy Act intended to guarantee that the Finnish state's authorities take heed of Åland's interests when new legislation and other decisions are being drafted. However, experience shows that these are not always observed and that divergent wishes from Åland are not taken very seriously.<sup>129</sup>

This is in stark contrast to the Nordic sister autonomy of the Faroe Islands. The Autonomy Act states that Danish legislation, even where the Danish Parliament has the legislative competence, cannot enter into force in the Faroe Islands without the consent of the Faroese Parliament. The same is true for the Isle of Man, with legislation from London only entering into force in the autonomy's territory if the Manx Parliament formally initiates a procedure to request that the legislation is extended to include the Isle of Man.

Once again, Åland's limited legislative competence, when compared with that of the Danish and British autonomies, is all too apparent. The more extensive competence of the Finnish Parliament makes it difficult, if not impossible, for Åland to avoid Finnish legislation in these legal areas entering into force in Åland. This is particularly clear within areas of mixed competence, or where Finnish parliamentary legislation in adjoining areas *de facto* directly affects the conditions for the autonomy's own legislation.

## **Weak international visibility and limited EU influence**

Generally speaking, Åland's visibility and position in the EU, as well as in the international arena at large, is relatively weak. Unlike the Faroe Islands, Åland does not have the right to enter into treaties, nor is it permitted to present its own views during international

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<sup>127</sup> The Åland member of parliament is nowadays included in the Finnish Parliament's Constitutional Committee.

<sup>128</sup> Another factor limiting Åland's ability to influence the legislative process in the Finnish Parliament is the fact that much of the preparatory work is done in Finnish.

<sup>129</sup> A current example of this is the laws that the Finnish Parliament has passed during 2020 and 2021 concerning the Corona-pandemic. For an assessment of the problems seen from the point of view of the autonomy's competence, see Ålands lagting (2020a) and Jonsson (2021).

negotiations and within various international bodies in the same way that the British autonomies can. Here, Åland has more in common with the strictly limited, international scope for action of the Basque Country and South Tyrol.

Åland's most important trump card with regard to international competence is the fact that agreements between Finland and other states that concern the autonomy's areas of competence may only enter into force in Åland with the Åland Parliament's consent. This is of principal importance as a protective mechanism that, if only to a limited degree, creates the need for Finland to involve the autonomy in at least certain external questions. However, in reality this seldomly occurs and the ruling can therefore be seen more as a form of procedural limitation rather than a compulsory obligation. In real terms, Åland's ability to influence is more like that of traditional political lobbying rather than the position of an officially recognised negotiating partner.

With regard to the EU, the Autonomy Act gives Åland the possibility to affect and, to a certain degree, take part in the preparation of the Finnish viewpoint.<sup>130</sup> By comparison, the autonomies of the Faroe Islands and the Isle of Man, which are external to the EU, have the ability to themselves, or in partnership with their respective state, negotiate and enter into agreements with the EU. This was also true of the (pre-Brexit) EU member, Gibraltar, with EU legislation belonging exclusively to the autonomy's area of competence, something which still applies even after Gibraltar's exit from the EU.

Unlike the EU-affiliated autonomies of the Basque Country and South Tyrol, Åland's co-operation with the EU in several important areas has been handled by the Finnish Supreme Court as an external (international) question,<sup>131</sup> something that - together with the lack of a seat in the European Parliament - has further limited the autonomy's possibilities to make its voice heard in EU co-operation.

In the somewhat more local context of the Nordic co-operation, Åland, together with the Faroe Islands and Greenland, has greater visibility. Åland takes part in the same way as the Danish autonomies in the official Nordic governmental and parliamentary co-operation, though not as a full-blown member on the same level as the five member states. However, Åland's position is in practice not as strong as that of the Faroe Islands and Greenland. The reason is, once again, Åland's restricted legislative competence in comparison to that of the Danish autonomies, which tends to limit Åland's real standing within several important sectors and political areas of the co-operation.

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<sup>130</sup> However, Åland's ability to take part is, as with several other areas where a close co-operation state-autonomy would be necessary, limited by the fact that most of the written material, as well as the discussions in the various working committees, is in Finnish.

<sup>131</sup> EU membership has not altered the division of competence, but the Supreme Court has nevertheless decided that, in case of disagreement in certain types of EU-related questions, it is the decision by the relevant Finnish ministry that applies, even with regard to Åland. Thus, in a number of cases, Åland's (administrative) competence has been transferred to Finnish authorities without any change to the Autonomy Act. See Högsta Domstolen (1992; 2017). Cf. the section in the following text on the state dominated (asymmetric) partnership.

## State control of taxation and tax revenue

Control of the finances of home rule is of great significance for our European and Nordic reference autonomies' scope for action and potential for development. With the exception of South Tyrol, financial control is guaranteed for the reference autonomies through the right to regulate taxation within their respective territories. The Italian autonomy lacks such taxation rights, but instead receives approximately 90 percent of the state's tax revenues from the region. The Danish and British autonomies have full taxation rights, including the indirect taxes, which is also true of the Basque Country. With the exception of certain customs duties (the Basque Country), the states do not collect taxes within the respective autonomies' territories. All of the above-mentioned autonomies with taxation competence exploit their rights through an active taxation policy with the purpose of strengthening their own competitiveness and potential for development.<sup>132</sup>

Åland, together with South Tyrol, lacks competence over the state's taxation of the Åland population and their companies (including indirect taxes).<sup>133</sup> In the same way as the Italian autonomy, the basic financing of the Åland autonomy is secured through the remuneration of the main part of the state's tax revenues from Åland in the form of a lump sum with free budgeting rights.<sup>134</sup> In addition, Åland has the right to impose - in addition to the taxation by the Finnish state - extra taxation on the Åland population, which for obvious reasons is not a particularly attractive alternative.<sup>135</sup>

Accordingly, Åland's taxation competence is, in all material respects, restricted to the municipal level, including the municipal property tax. The possibility to exploit this legislative right in a more qualified way is restricted by the fact that Åland is part of a tightly coherent, state system of taxation, which is beyond the control of home rule. The actual scope to pursue an active policy of finance and taxation, in a similar way to the autonomies with taxation competence, is thereby extremely limited.<sup>136</sup> When Finland undertakes different types of tax reform, it is difficult for the autonomy - even within the framework of its limited area of

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<sup>132</sup> At the EU level, the (tax) autonomies within the EU have had their right to a rate of taxation that differs from that of the respective member state's rate of taxation, confirmed by the EU Court of Justice decision of 11 September 2008 (*C-428/06 - C-434/06, Union General de Trabajadores de la Rioja et al*).

<sup>133</sup> The great significance of Flanders for the Belgian national economy, with its federally organised division of state taxation rights, makes it difficult in this case to draw comparisons with Åland and the other regional autonomies. See further, chapter 9 in Lindström (2020).

<sup>134</sup> The free budgeting right is recognised by the fact that there is no formal state control (e.g. by the state's auditing office) of the Åland Parliament's expenditure.

<sup>135</sup> The possibility to impose an extra tax on the Åland population has only been exploited on one occasion, when in the early 1960s additional funding was required to purchase a larger property in the southern Åland archipelago with the purpose of creating a nature reserve.

<sup>136</sup> A clear example of this is the lack of competence over indirect taxes, which means that the autonomy - despite the fact that Åland is exempt from EU VAT regulations - lacks the possibility to manage the use of this EU exemption that could be such an essential element of the Åland economy.

competence - to do anything other than adapt its legislation so that it works in the all-encompassing, state controlled system of taxation.<sup>137</sup>

### **State dominated partnership**

The British and Danish autonomies' relationship to their respective states can be seen as a bilateral interaction between two independent partners, who may well have conflicting positions and negotiating goals. Each partnership is based on a contract and tends to have the character of an international co-operation. Also for South Tyrol and Flanders, the state and the autonomous territory cooperate as independent bodies, with the same conditions applying to both. An important difference is that the partnership is understood to be internal (within the state), so that common agreements and solutions are therefore requisite. However, South Tyrol lacks competence in international questions, which means that its bilateral relationship with the state is more limited in extent than that of Flanders.

In the case of Åland, the relationship between state and autonomy is most reminiscent of that between the Spanish state and the Basque Country. In both cases, the basis of interaction between autonomy and state is bilateral, in other words, a co-operation between two, in principle, equal partners. But in practice, the partnership is dominated by the state's representatives, who tend to have the last and decisive word with regard to possible conflicts of interest.

However, this is not a partnership that is in every way dominated by the state. The Åland Autonomy Act contains clauses that regulate potential differences of opinion, with the bilaterally appointed Åland Delegation playing an important role.<sup>138</sup> An Åland example of a more contractual partnership is the possibility, through the use of so-called "agreement decrees", to regulate the two parties' various administrative competences within specialist areas with mixed competence, or where it is otherwise appropriate with this type of voluntary agreement.

Despite this, the relationship between the state and the autonomy must be viewed as essentially unequal, where the basis of the majority of cases is that the Finnish state and its authorities hold the final decision-making power. Accordingly, for home rule the achievement of a positive result depends primarily on the understanding and good will of the dominant party, and not on an equal, bilateral partnership. The appearance of inequality is increased by the fundamental lack of interaction in different committees and commissions (as is the case in several of the reference autonomies), where representatives from Åland and Finland work

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<sup>137</sup> One example of this is the reduced value of the municipal tax competence as a result of the Finnish Parliament's decision to reduce the municipalities' share of the income from corporate taxation. The tax bases have also been merged in a way that means that the Åland rebates in municipal taxation no longer have the desired effect.

<sup>138</sup> It should be noted that the delegation members appointed by the state, together with the casting vote by the state's representative in Åland (the governor), represent a majority in the Åland Delegation. However, the main principle is that decisions are made based on the members' specialist knowledge, independently of who they represent.

side by side on an equal footing.<sup>139</sup> With the exception of the Nordic co-operation, Åland also lacks the sort of more qualified, official representation and partnership with the state in the international arena (including the EU) that several of our reference autonomies actively exploit.

### **Conclusion: the Åland paradox**

Åland's legal position and political scope for action varies considerably depending on which of the nine autonomy factors, presented above, is the focus of the analysis. With regard to the question of fundamental constitutional security, the Åland autonomy's position is as strong as that of the strongest of the reference autonomies. Legislative exclusivity within the autonomy's area of competence is also significant, even if the actual contents of Åland's competence catalogue is more limited than that of several of our reference autonomies.

A recurring result of the comparison between Åland and the other autonomies is that the Åland autonomy's *de facto* (effective political/administrative) scope for action is more limited than its formal *de jure* (legal/constitutional) competence. Consequently, the Åland autonomy model tends to deliver less actual home rule than its legal arrangement indicates. Paradoxically, Åland's scope for action is considerably more limited than that of other autonomies with a constitutionally weaker position than Åland's.<sup>140</sup>

In the next chapter we will look more closely at the properties of the Åland/Finnish autonomy model that have contributed to this paradox, as well as the basic prerequisites for the long-term development of the Åland autonomy that these provide.

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<sup>139</sup> A clearly negative factor for the promotion of co-operation in this type of state working group and committee is that the working language is, as a rule, Finnish.

<sup>140</sup> These conclusions, drawn from a comparison between Åland and our six reference autonomies, are confirmed by the extensive classification by Ackrén (2009) of the world's autonomies concerning the extent of their home rule. According to the criteria used in the study to determine the degree of self-determination, 19 of Europe's 22 regions with some form of autonomy had the same - and in the majority of cases (17) a higher - degree of home rule than Åland.

## 8. The Åland autonomy's conditions and scope for action

As demonstrated in chapter 2 of this report, Åland - as with all non-sovereign territories, to varying degrees - is affected by the pressure of the integration regime characterising all territorial states, in this case Finland, in a number of ways.

Three attributes of the applied model of self-determination - i.e. the basic conditions for home rule - are decisive for the autonomy's ability to handle the tendency toward territorial integration, associated with belonging to a state, in a way that avoids the erosion of the autonomy's scope for action. These are:

- *The autonomy's external conditions:* Its background in international law and scope for action in the international arena
- *The autonomy's internal conditions:* The extent and contents of the legal and political competence as formally established in the current Autonomy Act
- *The main parties' roles and interaction:* The nature of the partnership between state and autonomy in the interpretation of the meaning of the Autonomy Act, and the scope for action and autonomy development that this provides

Against the background of what has previously been presented in this report, the following is an examination and analysis of the Finnish/Åland autonomy model with regard to these three factors, considered critical for the long-term development of the autonomy's political manoeuvrability and scope for action.

### The external conditions

The establishment of the Åland autonomy in the context of international negotiations offered the autonomy a strong initial position with good possibilities for future development. Åland's internationally recognised position as a territory with an exceptional political position was strengthened by the demilitarised status derived from the Treaty of Paris of 1856, which was reaffirmed in connection with the establishment of the autonomy in 1921.<sup>141</sup> This protected position was further secured by the possibility given to Åland to submit complaints to the international community (i.e. the League of Nations) in case it was deemed that Finland had not fulfilled its commitments according to the decision of 1921. Sweden's commitment within the framework of the Åland Agreement from the same year provided a complementary, bilateral dimension to the autonomy's external security. There are therefore good grounds to

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<sup>141</sup> Demilitarisation of the Åland territory was based on a separate international convention, which subsequently was integrated into the autonomy arrangement. See chapters 2 and 3 in this report.

state that the external conditions in the form of international (political/legal) commitments were good, if not very good.

### **From international to national commitment**

However, the original setup of home rule had a weakness, namely the absence of Åland competence with regard to, in principle, all future international contexts and agencies. Accordingly, the external security of the autonomy was dependent on the international alliances and decision-making bodies that existed when it was established, including the League of Nations' continued authority and existence.

Since the first Autonomy Act was introduced in the early 1920s developments have revealed the potentially negative consequences of this weakness in the international guaranteeing of the original autonomy model. Åland's right of complaint to the international community, an important part of the external commitment, ceased to exist when the League of Nations was dissolved at the onset of the Second World War. Its successor, the United Nations (UN), stated in 1951, in a document of great importance for the future commitments of the organisation, that there was no need to adopt the League's rights of complaint.<sup>142</sup> An internationally binding commitment was thereby replaced by a more vague reference to a "customary right" based on international law.

The damage caused by the loss of the international right of complaint was to some extent counteracted by a new ruling in the second Autonomy Act, whereby international treaties (which affect the Åland autonomy's area of competence) made by Finland must receive the consent of the Åland Parliament before they can enter into force in Åland.<sup>143</sup> This was an improvement, even if it cannot be seen as adequate compensation for the lost right of complaint to the League/UN.

The gradual transformation of the international guarantees of the Åland territory's status into what amounts to an internal Finnish commitment has been strengthened, during recent decades, by reports and opinions at the government ministry level as well as from the Finnish Parliament. The Ministry of Justice thus concluded in 2013 that home rule has developed in such a "favourable way that [...] international guarantees [are now] redundant."<sup>144</sup> A statement that, treated literally, could be interpreted to mean that the ministry now regards Finland's obligations with regard to the autonomy as a primarily national commitment that "lacks consequences and relevance in international law".<sup>145</sup>

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<sup>142</sup> United Nations (1951). However, it was stated at the same time that the UN is free to adopt the role played by the League if deemed necessary.

<sup>143</sup> See chapter 5, p. 36 and chapter 7, pp. 56-57.

<sup>144</sup> Justitieministeriet (2013, p. 66). Cf. also footnote 110 above.

<sup>145</sup> Spiliopoulou Åkermark (2014, p. 10)

Even the Åland Agreement between Sweden and Finland - the bilateral part of the original international commitment - has been cautiously questioned in Finland.<sup>146</sup> This has in recent years led to questions being raised in the Swedish Parliament regarding the agreement's continued validity from a Swedish perspective. In their replies various Swedish ministers have confirmed the validity of the Åland Agreement, while at the same time implying that they do not consider it to be particularly relevant within the framework of today's Swedish-Finnish co-operation.<sup>147</sup>

### **The main problem: Deficient international competence**

So far, the tendency to erosion of the autonomy's international status has not had any considerable negative effect on the autonomy's development. Of greater significance is, however, the absence of the sort of (delegated) treaty right that exists in several of our European and Nordic reference autonomies. This has had two, closely related consequences, namely:

- A restricted scope for action in implementing the consequences of EU membership
- Absence from many of those international bodies and cooperative arrangements that would have highlighted and strengthened Åland's special political position within areas of international co-operation important for the autonomy

Both of these circumstances restrict the autonomy's scope for action and visibility outside Finland (and in reality therefore also within Finland). They originate in the autonomy's generally weak - in many cases totally absent - competence in external, so-called "foreign policy", questions. Unlike the Nordic sister autonomy of the Faroe Islands, Åland lacks - with the exception of the Nordic co-operation<sup>148</sup> - self-representation in policy areas of great importance for Åland and its autonomy regarding international co-operation, including those areas where Åland is the competent legislator.<sup>149</sup> Consequently, Åland and the autonomy are made invisible in many of the inter-state arenas of co-operation where issues of importance, also for Åland, are handled and resolved.

The most acute problem is, however, the limited scope for action in the (Finnish state's) preparation and implementation of EU legislation, which is important for Åland's development. As described in previous chapters, Åland's possibility to be informed about, and in some cases even to take part in, EU co-operation is included in the current Autonomy Act. However, in reality it has been difficult to make Åland's views and wishes heard. Above all

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<sup>146</sup> See Utrikesutskottet (1990, p. 2) and Justitieministeriet (2013, p. 65).

<sup>147</sup> The responsible ministers' replies in the Swedish Parliament to question 2015/16:54 and question 2020/21:1710 by Per Lodenius (C).

<sup>148</sup> As presented earlier in this report, Åland is part of the Nordic co-operation together with the Faroe Islands and Greenland.

<sup>149</sup> Cf. the Danish (and several British) autonomies, which take an active part in several international treaty areas, and as members in a number of inter-state bodies, such as IMO, UNESCO, FAO, etc. See further chapters 4 and 7 in Lindström (2020).



else, this concerns the possibility to actively take part in and influence the preparation of the national implementation of EU legislation (which often affects Åland's areas of competence), as well as the preparation of the Finnish positions with regard to new EU legislation.<sup>150</sup> The autonomy's weak position is especially clear where Åland and Finnish interests in some way deviate from each other.<sup>151</sup> As discussed in earlier chapters, the Supreme Court's interpretation of parts of the EU co-operation as "foreign policy" has, in practice, brought about a transferral of certain administrative competences from the Åland autonomy to the Finnish state.<sup>152</sup>

## The internal conditions

An autonomy's internal guarantees and conditions for development are built on two foundation blocks, namely the constitutional protection of home rule and its actual material contents and extent. Here follows an examination of the Åland/Finnish autonomy model with regard to these two factors.

### Strong constitutional link - problematic interpretative praxis

All three versions of the Åland Autonomy Act include the ruling that Finland may neither unilaterally change the law's contents, nor, accordingly, the extent of the Åland competences. A change requires a qualified majority decision of both the Finnish Parliament and the Åland Parliament. An equivalent ruling was also included in the earlier Constitution and now in the current Finnish Constitution (2000).<sup>153</sup> As shown in this report, the Åland competence as specified in the Autonomy Act has exclusivity within specific legal areas. The arrangement is such that Finnish legislators and authorities may not unilaterally restrict, or in any other way undermine, the possibility for self-legislation adapted to Åland's needs and special circumstances.

However, there is a weakness in the Åland Autonomy Act with regard to the exclusivity of Åland's competence: the law gives the Finnish Parliament the right to legislate on the contents of and changes to the Constitution.<sup>154</sup> The interpretation of the relationship between the Autonomy Act and the Finnish Constitution as introduced by the Supreme Court has, in several cases, restricted Åland's legislative possibilities within areas of competence defined by the Autonomy Act as belonging exclusively to Åland.<sup>155</sup> As noted earlier in this report, the tendency to impose restrictions on Åland's legal competence has been particularly

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<sup>150</sup> For a recent report on problematic issues regarding Åland and the EU, see Ålands lagting (2020b).

<sup>151</sup> See chapter 7 (footnote 131) and Högsta Domstolen (1998; 2017).

<sup>152</sup> This concerns primarily the areas of competence that are affected by the national (and therefore also Åland's) implementation of EU legislation.

<sup>153</sup> The ruling is included in article 120 of the 2020 Finnish Constitution, and in the current Åland Autonomy Act, article 69. For a thorough review and analysis of the development of the relationship between the constitutional law (and the earlier Constitution), see Holm-Johansson (2020).

<sup>154</sup> Åland Autonomy Act, article 27, section 1 (ÅSF 71/1991).

<sup>155</sup> And this without any change to the Autonomy Act. Several concrete examples of this are identified and thoroughly examined by Holm-Johansson (2020).

clear in those areas that in some way concern civil rights and liberties that are laid down in the Constitution, rights that have been given a very broad interpretation by the Supreme Court. The problem has been accentuated by the fact that the Supreme Court now uses statements prepared by the Finnish Parliament's Constitutional Committee, a politically appointed body, as a source of law in its control of the Åland legislation. This has allowed a degree of uncertainty to creep in regarding the contents and limits of the constitutional protection of the Åland Autonomy Act and its competence.<sup>156</sup>

In contrast to the above-mentioned uncertainties regarding the autonomy's external protection, the interpretation of the Åland Autonomy Act's status in relation to the Finnish Constitution has negatively impacted Åland's competence in a number of ways. In practice, this has meant only minor restrictions to the autonomy's possibilities to self-legislate, at least thus far. However, in principle, the practice of interpreting the Autonomy Act in relation to the Constitution provides cause for concern. A more significant problem from the perspective of home rule is the limited extent and contents of the Åland catalogue of legislative competence when compared with those of our reference autonomies, and it is to this that we now turn our attention.

### **The main problem: Limited competence**

As presented in chapter 5 of this report, the division of competence between the Åland Parliament and the Finnish Parliament is defined in the current Autonomy Act in the form of two catalogues, with a specification of the respective parties' areas of legislative competence. This type of "enumeration", the listing of the two parties' different areas of competence, was introduced in the second Autonomy Act in the early 1950s.<sup>157</sup>

A closer examination of the catalogues of legislative competence in the current Åland Autonomy Act reveals an important observation regarding their extent and contents. Firstly, there is a clear *quantitative* imbalance between the two parties' respective competences. The Finnish Parliament's competence comprises significantly more legal areas (48) than that of the Åland Parliament (27).<sup>158</sup> The other, equally important weakness is the *qualitative* imbalance in the current division of competences. The Finnish Parliament's catalogue of competence is not only significantly more extensive than that of the Åland Parliament, it also includes a number of legal areas that are more fundamental for societal development.

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<sup>156</sup> For an informed analysis of this problem, see Palmgren (2020).

<sup>157</sup> At the same time, the residual principle was abandoned, which, at least in principle, paved the way for a future development of the autonomy within those areas that were not clearly defined as belonging to the state's areas of competence. See further in chapters 3 and 4 of this report.

<sup>158</sup> This is a clear confirmation of the strong limitations to the Åland autonomy's scope for action that are included in its legal and political set-up. In comparison, the Faroese autonomy comprises, with a few (not yet assumed) exceptions, all areas of law excluding constitutional issues, the Supreme Court, citizenship and defence.

This includes procedural law (both private and public), civil and criminal law, the main part of the taxation rights, more or less all legislation connected to companies and corporations (including legislation that regulates banking, insurance and shipping), legislation of labour markets and labour, pension legislation, as well as the technical norms and standardisation that affect occupational conditions within ever greater areas of society.<sup>159</sup> In addition to the fact that the examples given above (a list which is not exhaustive) substantially limit the Åland autonomy's extent and scope for action, their central role in the regulation of modern society means that they often tend to influence and restrict the possibilities to deviate from current Finnish legislation even within those legal areas where Åland, formally, has the right of exclusive self-legislation.

Previous chapters have clearly illustrated the effects on the Åland autonomy's scope for action of the state's competence within an area central for societal development (and politics), namely taxation, where the state's competence has undermined the value of the Åland Parliament's competence over municipal taxation.<sup>160</sup> Similar effects of current Finnish legislation also exist in varying degrees within several other "exclusive" legal areas of the Åland autonomy, e.g. within parts of the public administration, the health service, social services, and regulations regarding planning and construction.<sup>161</sup>

The limiting effects of the Åland Autonomy Act's formulation of competence does not stop here. The overpowering quantitative and qualitative nature of the state's competences tends to contribute to the existence of a number of overlapping areas and judicial grey areas, complicating the question of competence. In practice, the simplest way of solving these problems - which have a tendency to crop up within new legal areas as a consequence of general social development - is to use so-called "form-legislation", i.e. legislation by copying a Finnish law.<sup>162</sup>

The result is that significant parts of the Åland legislation can be regarded as integrated into the Finnish state's legislative regime, with little possibility for genuine self-legislation based on Åland's needs and particular circumstances. Thus, almost one quarter of the legislation within the Åland autonomy's area of competence today comprises state laws, which through the method of "form-legislation" have been adopted in a more or less unaltered state.<sup>163</sup>

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<sup>159</sup> Of those European and Nordic autonomy arrangements examined by Lindström (2020), the Danish and British autonomies have competence in all of these legal areas. The study's other three autonomous regions (South Tyrol, the Basque Country and Flanders) have competence in significant parts of the legal areas listed above.

<sup>160</sup> See above pp. 41-42, as well as footnotes 136 and 137.

<sup>161</sup> Construction and planning is a typical example of how state competence within another legal area, in this case different types of "standardisation", not only reduce the possibilities of actively self-legislating within the Åland areas of competence, but also have negative consequences relating to language, thus contravening the original purpose of the autonomy. Cf. chapter 5, p. 40 above.

<sup>162</sup> This sort of copying by Åland of Finnish legislation, as well as its consequences, is discussed also in the previous chapter. See p. 51 and footnote 114.

<sup>163</sup> According to *Ålands lagsamling* (ÅFS), on average, every fifth law adopted by the Åland Parliament during the period 2017 - 2020 was a copy of the equivalent Finnish law.

Moreover, significant parts of the remainder of the Åland legislation consist of marginal adjustments to current Finnish legislation.<sup>164</sup> This applies not least to the legislation that regulates different types of technical standardisation and requirements for professional competence, and has consequences concerning occupational requirements in the Åland labour market. In the long run, this also affects the conditions for the protection of the Swedish language, which is a central part of the Åland/Finnish autonomy model. An example of this is the newly adopted social care law, which in several cases presumes qualifications in accordance with Finnish professional standards.<sup>165</sup> This also applies to a varying degree within the educational sector, where teachers with a Swedish educational background are disadvantaged by the link to the Finnish educational system's requirements, which is in essence applied within the Åland educational system. Despite the fact that the Åland Parliament has competence within both social care and education, the Finnish standard has been adopted in determining what is "national" competence according to the current EU directive.

## The partnership's role and impact

The limitations of the autonomy's external and internal scope for action discussed above have contributed to Åland being increasingly dependent on a well-functioning partnership with the Finnish state. The possibility for home rule to develop in accordance with its original purposes requires, in practice, a close interaction with the state's political and legal representatives, a partnership whose contents and conditions are considered more closely below.

### The asymmetrical control system

A closer examination of how the implementation of the material contents of the Åland Autonomy Act's competence relative to the Finnish state's competence functions, indicates a significant *structural asymmetry* between the two partners. As previously noted in this report, the legal representatives of the state (the Supreme Court and, in certain cases, the Finnish Parliament's Constitutional Committee) have, in practice, the interpretative prerogative regarding the determination of the autonomy's boundaries in relation to the state competences that are defined in the current Autonomy Act.

The Finnish state's dominance in the control system is modified to a certain degree by the presence of the bilaterally appointed Åland Delegation. However, the delegation's primarily advisory role in the legal control system does not change the fundamentally asymmetrical

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<sup>164</sup> A good example from the social sector was when the Åland Government in the beginning of 2019 introduced a new legislative package with the purpose of modernising the Åland social legislation, the responsible Social and Health Minister Valve stated that "ninety percent of the legislation [in the package] already applies in Finland" (Valve quoted in *Tidningen Åland*, no. 27, 2 Feb. 2019).

<sup>165</sup> According to the Åland municipal association, "the Åland Government has to a great degree borrowed phrases and ways of thinking from equivalent [social] laws in Finland", which amongst other things creates problems in the recruitment of suitable staff within the social sector (the association's director quoted in *Tidningen Åland*, no. 42, 19 Feb. 2019).

relationship between the Finnish state and the Åland autonomy. The unequal partnership is not a result of Finnish control of Åland legislation,<sup>166</sup> as such, but rather the absence of an equivalent control that would prevent Finnish legislation from coming into conflict with the Åland autonomy's scope for action and legal rights within its areas of competence.

The consequences of the asymmetry in the legal interaction between autonomy and state is amplified by two tendencies in the interpretation of Åland's legally defined competence. We have previously in this chapter, but also in chapters 5 and 7, examined these tendencies. The first is the tendency of the Supreme Court to determine the limits and material contents of the Åland Autonomy Act based on the broadest possible interpretation of Finnish state competences.<sup>167</sup> This has often had the effect of limiting the possibilities of a smooth development of the autonomy based on the needs of Åland society.

The second problem is the Supreme Court's dominating (restrictive) principle of legislative interpretation during the 100 years since the autonomy was established. The tendency to a restrictive interpretation, following "the letter of the law", has further reduced the possibilities of a more flexible and permissive interpretation based on the autonomy's fundamental purpose and aims.<sup>168</sup>

### **The main problem: State precedence in the political partnership**

The organisation of the political partnership between Åland and Finland means, in practice, that one party (Åland) is to a great extent dependent on the other party's co-operation and willingness to actively promote a development of home rule based on Åland's needs and conditions. This dependency on the Finnish state's good will and active support for a well-functioning and flexible development of the autonomy, as seen from Åland's perspective, can be noted in the following important respects:

- Åland's dependency on the Finnish Government's and Parliament's priorities in revising or amending the current Autonomy Act
- Åland's dependency on the Finnish state's desire and ability to provide information about state legislation that is of great importance to Åland, and to take into account Åland's opinions regarding this legislation
- Åland's dependency on the Finnish state's handling of Åland's wishes in the implementation of EU legislation and in the preparation of Finland's EU positions

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<sup>166</sup> Though it must be said that a similar, asymmetric and very strict, control of the legislative process does not exist in any of our six European and Nordic reference autonomies. See previous chapters and Lindström (2020).

<sup>167</sup> For concrete examples of the tendency to the broadest possible interpretation of Finnish state competences and a much more "minimalistic" interpretation of the autonomy's competence, see Jansson (2020).

<sup>168</sup> For a more detailed analysis of the Supreme Court's praxis in this respect, and in other matters, see Jansson (2020) and Jansson & Lindström (2021). Worth noting here is that a more flexible and "purpose driven" interpretation of the home rule's legal extent, with the exception of the Basque Country, has characterised the development of our reference autonomies. See Lindström (2020).

- Åland's dependency on what the Finnish state permits concerning Åland's participation in other international co-operation

The first point - *dependency on the Finnish Government's and Parliament's priorities in revising the Autonomy Act* - is derived from the originally good intentions to guarantee that the Finnish Parliament could not unilaterally act to impair the contents and extent of the autonomy. However, the downside of this is that the autonomy's development has in practice been decided by the party that has the lowest ambitions and least wishes to instigate a revision, i.e. as a rule, the Finnish state.

Dependence on the state's political goodwill when renewing the Autonomy Act is clarified by the fact that it is the state that decides the political parameters for the preparatory work that always precedes a larger revision of the Autonomy Act. The more than ten-year preparation of the current (third) revision of the Autonomy Act is here a noteworthy example. During this preparatory period, almost all of the most important of Åland's wishes have been rejected by the state's representatives. Hardly surprisingly, the resulting bill bears the stamp of the state's minimalistic intentions rather than Åland's original requirements for a revision that would pave the way for a more flexible and permissive development of home rule.

Åland's subordinate position in the political process that precedes a reform of the Autonomy Act is confirmed by the fact that only one minor change has been implemented during the ongoing revision. This concerns an adjustment to the conditions for the autonomy's financing, a revision that does little to meet the original requirements of increased taxation competence. Moreover, this marginal change to the Autonomy Act seems to have been motivated by the consequences of a politically prioritised reform of the Finnish healthcare system's financing, rather than a desire to accommodate Åland's wishes.<sup>169</sup>

The second point listed above - *dependency on information about, and the possibility to influence, state legislation of importance to the development of Åland society* - reflects the disadvantage that the autonomy has in relation to the more comprehensive and socio-structurally significant state competences. The provision in the Autonomy Act regarding the right to information and the possibility to submit opinions is intended to reduce the negative effects of state legislation poorly adapted to the needs and conditions of Åland society. However, as previously noted in this report, it appears to be difficult for the state authorities to inform the autonomy of forthcoming legislation of significance for Åland in a way that is adequate and functional. Information is often totally lacking - or is provided so late that preparation time is cut unacceptably short.

Of importance here is the Finnish state's ability to meet the requirements regarding information posed by the Autonomy Act. The fact that the Autonomy Act postulates that all

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<sup>169</sup> The political process behind the suggestion from Åland to change the autonomy's financial system is more closely described in chapter 5 above (pp.41-42).

information is provided in Swedish contributes to the inadequacies in the flow of information from a state administration that lacks the necessary knowledge of the Swedish language that a smooth interaction between state and autonomy requires.<sup>170</sup>

In addition, even when the autonomy has had the possibility to present its opinions regarding forthcoming state legislation, these have seldom been given greater consideration. This applies not least to legislation within areas with unclear and/or mixed areas of competence. The pandemic legislation passed by the Finnish Government and Parliament during 2020 and 2021 is a clear example of how little the Autonomy Act's provision regarding advance information and the possibility to influence state legislation means.<sup>171</sup>

The third of our four factors - *dependency on the Finnish state's willingness to cooperate and to take into account Åland's wishes in the preparation and implementation of EU legislation* - is closely related to the autonomy's weak position concerning state legislation of importance for Åland. However, in this case the Åland Autonomy Act gives a more explicit, and therefore stronger, support to Åland's active inclusion in the EU co-operation. Despite this, it has been difficult for Åland to make its opinions heard in the state's handling of EU questions and, not least, to be informed in time and to be able to influence the preparation of the Finnish positions that concern Åland within the EU co-operation. Åland's role in Finland's EU politics has been weakened further by the lack of a representative in the EU Parliament.

The fourth and final point listed above - *dependency on state concessions and support to be able to play an active role in international bodies handling questions of particular importance for Åland* - is a consequence of the autonomy's limited competence in the international arena. This applies not least to co-operation within the autonomy's core areas (education and culture), but also concerns large parts of other international co-operation of importance to Åland.

Our European and Nordic reference autonomies reveal examples of how it is possible for an autonomy to take part in international co-operation, which is not expressly reserved for sovereign states - provided that permission and support is given by the autonomy's metropolitan state. Because this has not been available to Åland,<sup>172</sup> it has resulted in a general

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<sup>170</sup> Highlighting a further weakness in the partnership, namely Åland's dependency on having the right person in the right place in the Finnish state administration.

<sup>171</sup> For an account of how parts of the state's pandemic legislation contravened the requirement for information stipulated in the Åland Autonomy Act, see Ålands lagting (2020a). A summary by the newspaper *Tidningen Åland* (no. 72, 29 March 2021) showed that the Finnish Government (in the Åland Government's opinion) had infringed the Åland Autonomy Act on no fewer than 22 separate occasions during "the pandemic year" of 2020. An update as of September 2021 shows, according to Veronica Törnqvist, the head of the Åland Government, that the number of violations of the Autonomy Act now amounts to 43 (interview in Åland's Public Service Radio, 22 September 2021). Cf. also Jonsson (2021).

<sup>172</sup> It should be noted that the Ålanders themselves have not been particularly active in testing the possibilities of improved Åland representation within relevant parts of the international co-operation. A possible first sign of increased ambitions concerning the autonomy's international visibility is the application for membership in UNESCO (according to the Faroese model), which was submitted by the Åland Government in April 2021 (<https://www.regeringen.ax/sites/www.regeringen.ax/files/attachments/protocol/nr01-2021-pleni-u3.pdf>).

absence from international forums handling questions where Åland has legislative competence, or where the co-operation is in some other way particularly important for Åland.

The Nordic co-operation, which is the exception to the general rule of Åland's absence from the international arena, sheds its own special light on the limitations in Åland's position, compared to that of the other two autonomies in the co-operation, the Faroe Islands and Greenland. It was not thanks to a productive and close interaction with the Finnish state that the doors of the Nordic co-operation were opened for Åland in the early 1970s. It was in fact the demand from the Faroe Islands, supported by Denmark, to be included in the co-operation that paved the way for Åland membership.<sup>173</sup>

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<sup>173</sup> Finland was initially dismissive with reference to the fact that the co-operation was reserved for sovereign states. This was rejected by an enquiry instigated by the Nordic Council, the so-called Kling committee (Nordiska Rådet 1970), that suggested that the autonomies should be granted membership. It was only after this that Åland membership was accepted (Mattson-Eklund 1998).



## 9. The overall picture: A one-legged autonomy model

It is now time to return to the points discussed at the beginning of this report, the corner-stones of the state's overriding mechanism of integration, to which a regional autonomy, such as Åland, is by definition linked. As presented and analysed in the introduction to this report, the modern (nation) state is constructed around three types of territorial integration, namely:

- The integration of language and the means of communication
- The integration effects of state sovereignty
- The integration of economy and market

The central issue of this chapter is if, and in what way, Åland's home rule can limit the (for the autonomy) undesirable consequences of these three corner-stones of territorial state integration that, by definition, accompany any association with a traditionally formed sovereign state, such as Finland.

### **The autonomy's linchpin: Protection from Finnish linguistic integration**

The legal and political core of the Åland autonomy primarily concerns the protection of the archipelago's national identity as a culturally and linguistically Swedish region. This has a direct bearing on the first of the three mechanisms of integration in the modern state's *modus operandi*, as listed above. The ambition has been to guarantee the population's linguistic identity through stipulations that Swedish is the official language of administrative authority within the Åland territory and the language of instruction within Åland's publicly funded educational system.

The original, internationally sanctioned intentions that Swedish should be the dominant language of communication within Åland's borders has been, to all intents and purposes, followed up and concretised in the succeeding autonomy legislation.<sup>174</sup> In other words, the legal protection of the Swedish language is still the linchpin that gives cohesion to the Åland variant of territorial autonomy.

It is therefore clear that the purpose of the Åland autonomy model, as well as its form, is focused on counteracting the pressure of linguistic integration that the association with the Finnish state entails.

### **State sovereignty with limitations**

While Åland's Swedish identity was being protected by the international and bilateral agreements relating to the establishment of the autonomy, Finland was given full territorial

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<sup>174</sup> According to the current Autonomy Act, this also includes all state communication with Åland and the Åland authorities, but, because of a lack of language resources, the Finnish state often breaks this regulation.

sovereignty over the archipelago. The nation state's second fundamental condition for an effective integration regime, the complete and internationally recognised political control over a clearly delineated state territory, was thereby left intact by the establishment of the Åland autonomy.

This being so, it is nevertheless clear that the establishment of the Åland autonomy has placed a number of *de facto* limits on the Finnish state's sovereign control of this part of its territory. Within those legal areas where Åland practices its right of legislation (though with significant limits as described in this report), the Finnish state lacks the full legal and political control normally associated with state sovereignty. This also applies to military control, with the archipelago's demilitarised and neutralised status limiting the state's scope for action regarding the Åland territory and the national security strategy. It is therefore possible to say that Åland is subject to a less common (if not unique) form of shared sovereignty,<sup>175</sup> something that is not easy to equate with the traditional interpretation of the meaning of the term (national) state sovereignty.

This does not mean, however, that Finland has relinquished its primary claim to sovereignty over that part of its territory that constitutes the Åland Islands. Åland's competence concerning legislation and politics within its own territory is limited not only by the significant gaps in the autonomy's legislative competence, but also by the fact that Finland, as a rule, has the last word regarding the interpretation of the limits and contents - as well as the future development - of the autonomy's legal and political scope for action.

In other words, the Åland autonomy constitutes only a limited protection to the pressure of the second fundamental factor of Finnish state territorial integration, that is, its primary political sovereignty over Åland.

### **An economically integrated state territory**

Åland is, with a few exceptions, subject to the same state legislation and regulations concerning the archipelago's economy and business sector as the rest of the Finnish state territory. Company law, banking and insurance legislation; contract and labour market legislation; regulations governing technical standards; professional certification; import and export regulations, and, not least, the state taxation of the Åland population and their companies, falls to all intents and purposes outside the autonomy's competence.

The third corner-stone of the territorial state's successful integration politics - the establishment and maintenance of a national (internal) economy and labour market delimited by national borders - has therefore been retained by the Finnish state, more or less irrespective of the Åland autonomy's existence and legislative competence. Thus, the state

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<sup>175</sup> All more qualified autonomies (and state federations) involve some form of shared (or overlapping) territorial sovereignty. Today's EU is an unusually ambitious form of shared sovereignty. Recent, conflict-dominated developments in the EU, with member states tending more and more to place their own national interests first, show how politically unwieldy this type of shared sovereignty can be. Cf. also Lindström (2019).

border's primary role concerning the economy, i.e. to prioritise national and commercial integration over cross-border interaction, also applies to a great extent to the Åland part of the Finnish state territory.

### **State economic integration v. Åland's linguistic protection**

What are the consequences, therefore, of the Åland autonomy model's overriding focus on protection against linguistic integration, the first of the three primary mechanisms of state integration? The answer is that the combination of robust language protection and a lack of competence in the main part of the (state's) legislation and the public regulatory system that form the Åland business sector's fundamental operational conditions has had far-reaching consequences. Probably the most important of these is the growing divide between the population's linguistic and cultural identity and the business sector's needs regarding qualified staff. Mainstream Åland culture is, today, more and more turning its back on Finland and the Finnish linguistic area. Instead, it is Swedish trends, official (TV/radio, popular press) and social media (Internet), and cultural patterns that dominate the everyday lives of Ålanders. The average Ålander's knowledge of Finnish culture and politics, and - not least - the ability to communicate in Finnish, is superficial, at best, and often non-existent.

An initial inspection seems to indicate that the autonomy's focus on the protection of the Swedish language and culture has led to the originally intended result. However, due to the autonomy's failings with regard to the other two types of state integration, a simultaneous development has occurred in the opposite direction concerning what could be called the Ålanders' "livelihood positions". The orientation of the Åland business sector, and accordingly the entire Åland economy, toward the Finnish economy and markets is today a tangible reality.<sup>176</sup> This has led to a dilemma, with young Ålanders mostly prioritising Swedish further education and thereby receiving their academic and professional qualifications in Sweden - while the Åland business sector, via its strong integration with Finland's economic territory, instead demands knowledge of relevant Finnish legislation and a good acquaintance with the Finnish markets. Accordingly, this creates a growing demand for the ability to freely communicate with Finnish state authorities, organisations and companies in the Finnish language. Despite Finland's official status as a bilingual country, this is in practice a must with regard to contact with Finnish partners; a requirement that the Åland workforce, educated in Sweden (and other parts of the world outside Finland), can seldom fulfil.<sup>177</sup>

The result has been that young Ålanders, the majority of whom have received their professional education in Sweden, are missing out on the opportunity to secure employment

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<sup>176</sup> A thorough analysis conducted by ÅSUB (*Statistics and Research Åland*) of the Åland economy's international connections following EU membership showed that "integration with the EU has not meant that the Åland business sector has reduced its trading operations with the rest of Finland. On the contrary, integration with the Finnish economy was strengthened [...]" (ÅSUB 2009a, p. 12).

<sup>177</sup> A poll conducted in 2008 of more or less all larger private companies in Åland revealed that good knowledge of the Finnish language and acquaintance with the Finnish market was one of the most essential factors of merit in the recruitment of senior staff within the Åland business sector (ÅSUB, 2008b).

in Åland that corresponds with their level of education and qualifications. Instead, they have been replaced by a workforce from Finland with good, or at least better, knowledge of the Finnish language and, for the Åland business sector, important knowledge of and contacts to other parts of Finland.<sup>178</sup> Åland has thereby - despite its autonomy and focus on linguistic and cultural protection - become more and more dependent on the social, professional and linguistic competence that is demanded by Finnish society as a whole.

### **The cultural and linguistic autonomy's limits**

We have now reached the point in this report where it is possible to state the Åland autonomy's legal and political position within the Finnish state. The picture that emerges is divided. Seen strictly from a constitutional perspective, and with regard to international law, the autonomy is robust, but if its actual contents are analysed then the impression changes. Here, the picture is of an autonomy model that can be characterised as a form of extended cultural and linguistic autonomy, the limits and development potential of which are largely decided by the legal and political priorities of the Finnish state. This is also the background to the paradox described in chapter 7, that the Åland autonomy - even in comparison with a number of other, similar European autonomies - tends to deliver significantly less *de facto* scope for action than what it *de jure* promises.

There are many reasons for the political and legal restrictions that are contained within the Åland autonomy - including the poorly developed partnership with the state - and these have been presented and discussed in different ways earlier in this report. However, the single, most important reason for the limitations in the Åland model is the autonomy's generally weak position and limited scope for action outside of the linguistic and cultural sector. An aggravating - if not conclusive - factor in this matter is the tendency for "minimalistic" interpretation of the autonomy's contents and limits made possible by state sovereignty over the Åland territory.

The overall conclusion is therefore that the autonomy's greatest structural failing is its one-sided focus on language in combination with a lack of competence within a number of legal and political areas important for societal development; and not least the regulation of the more fundamental conditions for economy, trade and labour market that are so central for societal development. Åland's limited legal competence and scope for action within these political areas also, in the long run, undermines what has always been seen as the core of the Åland autonomy model, i.e. the protection of the archipelago's Swedish culture and linguistic identity.

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<sup>178</sup> On average, every third person born on Åland in every age-group from 1951 to 1990 (the most active professional age-groups in recent decades) have today left Åland and been replaced by immigrants, mainly (bilingual) people from Finland. In several age-groups, up to 50 percent of native Ålanders have moved away, the majority to Sweden. Of those who took their high-school diploma during the decade 2000 - 2010, only little over half remain, the rest live outside Åland, the majority in Sweden. See ÅSUB (2021) and official statistics on the Internet: [www.asub.ax/files/attachments/page/be52\\_personer\\_fodda\\_1951-2017\\_efter\\_arsklass\\_bostadsort\\_och\\_fodelseort.xlsx](http://www.asub.ax/files/attachments/page/be52_personer_fodda_1951-2017_efter_arsklass_bostadsort_och_fodelseort.xlsx).

A closely related observation in this context is that the one-legged Åland (linguistic) autonomy is still, to an excessive degree, defined by the century-old inheritance of its establishment. The new states and autonomous territories that, together with Åland, were created in the aftermath of the First World War took their form from an environment of international negotiation where protection of the national minorities' languages dominated both the political discussions and the resulting territorial solutions<sup>179</sup> - which the form of the Åland autonomy, a product of this international context, clearly illustrates. The language question is still a central factor of national identity, as discussed in this report's introductory chapter. However, as our reference autonomies show, an autonomy that is adapted to the modern world must have a significantly broader structure/arrangement than the sort of cultural minority protection that defines today's Åland autonomy.

### **Concluding reflection**

The above conclusions do not agree in all respects with the positive verdicts on the Åland autonomy's strengths that often are expressed both in research on Åland and in general debate. However, this does not mean that either of the two, apparently so different, conclusions must necessarily be wrong. The nature of the conclusions reached concerning the Åland autonomy's strengths depends on the starting point and reference frames the authors use, and which issues they are addressing.

If the starting point and the main issues concern the autonomy's international background and constitutional foundation within the Finnish state, then the results tend to confirm the understanding of a strong Åland autonomy. With regard to the issues raised by such a focus on the constitutional foundation and conditions, this is a reasonable conclusion to reach.

However, if the perspective is broadened to include the autonomy's strength with regard to its actual scope for action, another picture emerges. The autonomy appears significantly weaker and more vulnerable, which is also a reasonable conclusion to reach. If the authors, in addition to this, set aside the established Finnish/Åland "thought-box" concerning what an autonomy such as Åland's can/should include, and instead compare the autonomy's extent and quality with that which has been demonstrated to be possible to achieve in a number of other autonomies in today's Europe, then the weaknesses in the Åland model appear even clearer.

Two conclusions can be drawn from this. The first and most obvious is that the different ways of judging the autonomy's strengths and sustainability should be seen as complementary and therefore not necessarily contradictory. Previous studies that have been conducted of the Åland autonomy's constitutional status and background in international law contribute with valuable juridical analyses and competent evaluations of the autonomy's legal and

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<sup>179</sup> For an informed description of the environment for the international negotiations at the time of the Åland autonomy's establishment, including concrete examples, see Weitz (2019).

constitutional position. The corresponding analyses that focus on the autonomy's scope for action in relation to the Finnish state complement and modify these results in a way that does not reduce the value of the more juridical and constitutionally focused approach.

The second conclusion is that a realistic evaluation of the Åland autonomy's conditions for development in today's national and international settings presupposes a *holistic perspective* that incorporates both of the analytical approaches discussed above. This is particularly valid if the results are to be used as the basis of more concrete and action-oriented policy recommendations, something we return to in the report's next and final chapter.

## 10. Conclusions and recommendations

The main purpose of the Åland autonomy, and the original ambition behind it, was to guarantee the population's Swedish language and cultural identity. To ensure this, Finland and the League of Nations offered Åland the broadest possible self-determination without this leading to the creation of a separate state.

This report has shown that the core of the autonomy's legal and political competence still concerns the protection of the Swedish language. Therefore, it is not motivated to focus on linguistic issues in a policy that aims to develop and modernise today's autonomy model. The greatest problem (in the current Autonomy Act) is not the formal protection of the language, as such, but the lack of competence in the legal and political apparatus that is required to guarantee that the Autonomy Act's linguistic regulations achieve the required effect.

Thus, what Åland needs is a reform of its competence in the legal and political areas that determine the effectiveness of the regulations in the Autonomy Act concerning Swedish as the administrative language and the dominant means of communication. A reform that focuses on the limited, often absent, competence outside of the cultural and linguistic areas would also contribute to the realisation of one of the original promises pertaining to the establishment of home rule: to guarantee Åland the widest possible political manoeuvrability and scope for action within the framework of the Finnish state.

The overall picture of the autonomy's status that has emerged during the writing of this report clarifies the need to move the focal point of the autonomy from reactionary monitoring of the *status quo* to a more proactively aligned expansion of Åland's legal and political scope for action - a development toward the type of autonomy models seen in several of our European reference autonomies with significantly broader competence.

For the initiated reader this is hardly a new insight. In fact, this was one of the main ideas motivating the suggestion for a thorough reform of the Autonomy Act proposed by Åland more than ten years ago. However, the result has been meagre. The most important initiatives for renewal have been abandoned in favour of a much more modest reform, depending primarily on the dominance of the state's priorities in the preparatory process and the need for a final approval from the Finnish Parliament. We shall return to the implications of this later in the chapter.

### **No development of the autonomy without a supportive state partnership**

The failed initiative for a more thorough revision of the Autonomy Act pinpoints one of the most important prerequisites for a future modernisation of home rule, namely a well-

functioning, bilateral partnership with the state.<sup>180</sup> Without the sort of supportive - and, in relation to the wishes of the autonomy, generally flexible - state that we have seen in several of our reference autonomies, the path to a more qualified autonomy will remain just as unattainable as Åland's latest attempt to modernise home rule has shown.

The asymmetrical partnership, with its significant inadequacies in the exchange of information and a one-sided competence control that is based on the state's priorities and needs, must be replaced with a more equal partnership between autonomy and state. This is hardly achievable within the framework of the current Autonomy Act and the praxis that has been created by the Åland autonomy model. However, this does not mean that there isn't room for important improvements, e.g. concerning the exchange of information and engagement from both parties in a more active partnership.

The problem is that this is not enough. Experience from comparable territorial autonomies in the Nordic region and Europe shows that the fundamental condition for a more equal partnership is a clear, bilateral structure in the co-operation between autonomy and state - and one that is guaranteed in the respective Autonomy Act and/or Constitution. In addition, our reference autonomies indicate that there is a strong correlation between the extent of the autonomy's scope for action in the international arena and the quality of the partnership, in general. Denmark's handling of Greenland's representation in the EU Parliament is a good example of this. Unlike Åland, Greenland occupied one of the Danish seats in the European Parliament during the period it was, together with Denmark, part of the Union.<sup>181</sup>

## Two types of recommendations

The state dominated partnership does not, however, mean that the autonomy completely lacks scope for action. Through various initiatives - primarily in connection with the two major revisions of the Autonomy Act (see chapters 4 and 5) - it has been possible to rectify some of the failings in the original model. But the general impression is that the autonomy's representatives have had a low profile when it comes to exploiting the various possibilities that do exist to more actively challenge the consequences of the problems of competence. Rather than taking a more offensive and proactive stance to secure or broaden Åland's scope for action, the politics has been dominated by reactions to Finnish measures and legislation that are deemed to have conflicted with the purpose of home rule.

Åland's passivity has most likely contributed to the fact that the current Autonomy Act, despite its limitations, contains a number of unexploited possibilities for improvement of the Åland position, both within Finland and internationally. Several possible explanations for

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<sup>180</sup> It is worth noting here that the Tulenheimo Committee, in its report prior to the establishment of the first Autonomy Act of 1921, pointed out the crucial importance of a trustworthy political partnership between autonomy and state. See chapter 4, pp. 28-29.

<sup>181</sup> As a "normal" county in Denmark, Greenland entered the EU in connection with Denmark's accession in 1973. When Greenland, in 1979, received a similar autonomous status to the Faroe Islands, Denmark offered one of its seats in the newly established European Parliament to Greenland.



Åland's generally poor achievements in this area can be suggested (a lack of resources, knowledge and competence; prioritisation of other political goals; weak electoral support for increased self-determination, etc) but this is an issue that lies beyond the scope of this report.

Even when Åland's role in the weaknesses and problems that beset the everyday functioning of the autonomy are taken into account, it is nevertheless the need of a thorough reform of the Autonomy Act that is this report's primary conclusion. Unfortunately, considering how the most recent initiative for a major reform has been handled, the chances of a more substantial strengthening of the autonomy's partnership status and competence seem to be limited, at least for the foreseeable future.

For this reason, the following proposals focus on the type of action, which - within the framework of the current Autonomy Act - through a proactive approach by Åland, could contribute to an improvement of the autonomy's partnership status and scope for action. Finally, based on Åland's original proposal from 2010 for a renewed Autonomy Act, we shall identify and discuss the most important ingredients of such a major reform of the autonomy's competence and its way of interacting with the Finnish state.

### **Measures allowed by the current Autonomy Act**

The following suggestions are not intended to represent a complete list of what can be done within the framework of the current Autonomy Act. Neither are the recommendations systematically ranked according to a prioritisation model, be it from the perspective of home rule politics or economics (this is the responsibility of politicians not researchers). The purpose is rather to indicate which type of measures should be investigated if Åland were to pursue a more proactive approach to strengthening the autonomy's position and scope for action.

- *The partnership between Mariehamn and Helsinki*

One of the report's primary conclusions is that the partnership with the Finnish state needs to be invigorated on all levels. Åland could take the initiative to a high-level co-operation between the Finnish president and the Åland Parliament's speaker. The president's unique role in the autonomy system motivates, in fact obligates, to ongoing contact with the speaker. Similar relations need to be established throughout the administrative hierarchy; permanent secretary - state secretary, head of department - head of administration, etc. The Åland parties would thereby have the possibility to be more proactive and less reactive in the necessary interaction with the state and its representatives.

Another relevant suggestion in this context is to establish a special "Åland office" within the cabinet or the Ministry of Justice, where questions relating to Åland can, in an early stage, receive a qualified juridical examination and the Åland position be clarified. Officials should be appointed following consultation with the Åland

Government, and be placed, hierarchically, close to the relevant minister or state secretary.

There is already an informal group within the Foreign Office that promotes the Åland Example as a solution for territorial conflicts around the world. This task could be developed to include monitoring of how Åland's nationality guarantees have worked in practice, and to suggest improvements.

- *The B-list's possibilities*

The present Autonomy Act includes a so-called B-list, with six areas of law that can be adopted through simple legislative procedures. These are population registration, trade-, association-, and ship-registers, pension schemes for municipal employees, alcohol legislation, banking and credit sectors and employment contracts.

These areas of competence were of interest for Åland and the Åland business sector during the 1980s. It was also deemed to be acceptable for Finland to transfer them to Åland when the relevant law had been drafted. However, none of the possibilities for transfer of competence provided by the list have so far been exploited, a passivity on the part of Åland that has hardly benefited the autonomy's development. While waiting for a more thorough renewal of the Autonomy Act it is suggested that the now 40-year-old B-list is re-examined, based on present requirements and possibilities.

- *Competence and legislative control*

During the 100 years of the autonomy's existence, it is the limited area of legislative competence, in combination with the strict legislative control, that has had the most restrictive effects on the extent and development of home rule. Competence has been limited by the process of legislative control, particularly during the initial decades. But also during the period since the new Finnish Constitution was introduced we can see similar tendencies, though not to the same extent.

One of the most important measures that could be taken to reduce the tendency to "competence erosion" within the framework of the current Autonomy Act and praxis for legislative control, would be to abandon the now all-too-common Åland practice of "form-legislation".<sup>182</sup> Åland should, as far as possible, discontinue the copying of the equivalent Finnish legislation within its own areas of competence. In addition, the Åland Parliament should actively question/challenge the legal areas that, through established praxis and Supreme Court decisions, have been defined as areas of state competence, but which have been shown to undermine Åland's language protection or some other area of the Åland Parliament's competence.

The Åland Parliament should also argue/underline that the purpose of the autonomy and Finland's commitment to the international community requires that the

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<sup>182</sup> I.e. legislation by copying a Finnish law

legislative control allows for a freer interpretation of the Autonomy Act than has been the case, so far.

- *International presence and EU co-operation*

While waiting for a change to the Autonomy Act that would give Åland the possibility - similarly to the Faroe Island and Greenland - to more extensively represent itself in the international arena, the Åland Parliament should strengthen its presence in, primarily, Stockholm and Brussels.

With regard to Brussels and the EU position, Åland should follow the example of other European and Nordic autonomies and increase its participation in the preparatory work of the commission and other relevant bodies. The possibility of raising the status of Åland's special representative in Brussels to something like that of an ambassador should be investigated.

The autonomy must more clearly assert its role in the Finnish preparation of EU issues, not least with regard to the monitoring of how Åland's competence is manifested in EU directives that are subsequently transformed into Åland legislation. Because preparation is essentially conducted in Finnish, which means that the regulations stating Åland's right to take part are, in practice, not always possible to follow, Åland should to a greater degree make use of Sweden's material in the preparation of EU directives. In addition, the Åland Government and Parliament could also challenge the legislative control's interpretation of the transposition of EU-directives into national legislation as "foreign policy". It should instead be argued that it is a question of internal legislation, which can be easily motivated with reference to the EU treaty of accession.

Regarding other international co-operation and international treaty negotiations, there are a number of unexploited possibilities that could be used to increase Åland's participation and visibility within the scope of the current Autonomy Act. One possibility would be to establish a routine providing regular updates from the Finnish foreign office on current negotiations, and where specific reference is made to Åland in respective proceedings if the matter concerns Åland's competence. The procedure that was adopted when joining the EU is a good example of this. The Åland Parliament also has the possibility to reject an international treaty if there are reasonable grounds to assume that an agreement might impact a future parliament in an undesirable way.

Finally, Åland and the autonomy would also have much to gain from, once again with reference to the other Nordic autonomies, raising its international visibility through increased participation in the sort of international bodies that are not reserved for sovereign states (WHO, UNESCO, FIFA, etc.).

- *The language problem*

As pointed out above, Finland's preparation of EU legislation is arranged in such a way that Åland's officials, in practice, must be able to speak Finnish in order to take part. This problem could be reduced by following the practice suggested above.

Another problem is that a number of professional qualifications are defined on the basis of examinations conducted in Finland, which disqualifies the majority of Åland students, who have received their education in Sweden or another country (outside Finland). In order to reduce this problem, the Åland Parliament could legislate concerning Nordic or Swedish academic and professional qualifications, as well as handling the EU directive's "national competences" as legislation falling within Åland's jurisdiction.

This would also make it easier for Åland students in Sweden and the Nordic countries to move back home, thereby strengthening ties to the Swedish cultural area, which is a primary goal of one of the nationality guarantees. The Åland Parliament could request negotiations via the Finnish president for a bilateral agreement between Åland and Sweden concerning education in Swedish, supported by the Åland Agreement, with Finland guaranteeing national approval, as this is an area of state competence within the current Autonomy Act.

In those cases where the language problem cannot be solved through co-operation with Sweden, the Åland Parliament can, with reference to the current Autonomy Act, request extra state financing to cover the costs associated with protecting the Swedish language according to the Autonomy Act's original purpose.

- *Skills and competence development*

The maintaining and developing of the autonomy requires a broad set of skills at the general level within the autonomy's administration, as well as specialist knowledge of international law and relations. The Åland legislative process has an important role. Already when drafting the law it is required to motivate Åland's position and challenge the established definitions within the Finnish Parliament and state administration of legislative areas that, in practice, counteract the autonomy's purpose. This also applies in varying degrees to the whole of the autonomy's administration.

A suggestion aimed at strengthening Åland's capability would be to complement the Åland Islands Peace Institute's research into, and information concerning, Åland's international status in terms of peace and conflict with an increased investment in research into the legal and political conditions for the development of Åland's self-determination. An alternative would be to establish a centre of international competence for autonomy development at the Åland University of Applied Sciences, with an ongoing exchange of knowledge with other autonomies. The establishment of such a centre could also offer additional training and skills development for officials and politicians in the areas of Åland's legislation and administration.

## **Measures that require a renewal of the Autonomy Act**

To create the legal and political scope for action required to fulfill the ambitions behind the establishment of the autonomy (language guarantee and greatest possible self-determination) demands a fundamental revision of the whole Åland autonomy arrangement

- a structural renewal of home rule's conditions for development, which makes use of the experiences of similar autonomy arrangements in the Nordic region and Europe, as presented in this report.

As previously noted, a political process with the purpose of achieving a more fundamental reform of the current Autonomy Act has now been underway for over a decade. The work was initiated by two Åland parliamentary committees whose reform proposals were presented in 2010 and 2013 respectively.<sup>183</sup> The most important element of the reform proposals was to (re-)introduce the residual principle in the division of competence, i.e. that all legal areas - besides a limited number of state prerogatives associated with sovereignty - could be transferred to Åland's area of competence without changing the Autonomy Act. However, the majority of the original reform proposals have been rejected by the Finnish state in the subsequent political process.<sup>184</sup>

If the reform had been implemented with consideration to the most important of Åland's proposals, many of the problems that have been identified in this report would, if not totally disappear, be significantly reduced. Therefore, with the exception of the suggestion to strengthen the role of the Åland Delegation, the recommendations listed below are substantially the same as the proposals made by the two Åland committees.

- *Clearer relationship between the Autonomy Act and the Finnish Constitution*

The proposals of the Åland committees can be summarised as a demand for clear definitions in the Finnish Constitution and/or the Autonomy Act that no changes to the Autonomy Act can be applied to Åland prior to their approval by the Åland Parliament. This recommendation is also strongly supported by this report's results concerning the various problems with and limitations to the autonomy's competence resulting from the introduction of the new Finnish Constitution.

- *New principle for division of competence*

Here, the Åland proposals amount to a return to the residual principle of the first Autonomy Act, where only the core areas of Finland's state sovereignty are listed in the Autonomy Act. All other legislative and legal areas can be transferred to the Åland Parliament by means of a simplified procedure, with only the procedure and the timing being subject to negotiation.

This report has highlighted a negative effect of Åland's limited legislative competence (which could be reduced if the Åland committees' suggestion for increased scope for action was followed), this being the large number of mixed competences. In addition to contributing to the problem of the growing number of "form-laws" (i.e. laws copied from Finnish laws), they also give rise to a legal uncertainty that affects the individual citizen as well as the party imposing the law: Is it the Åland law or the Finnish law that applies, and in which case, which version?

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<sup>183</sup> See Ålands landskapsregering (2010; 2013)

<sup>184</sup> At the time of writing (September 2021), there is still no consensus on how the reform process will be completed.

It is worth referring here to this report's comparative analysis of international autonomies, which shows that the autonomous territories that have the broadest competence tend to have fewer areas of conflict with the "mother state", and as a result often enjoy a relatively conflict-free and well-functioning partnership with the state.

- *Increased international competence*

Increased competence in treaty jurisdiction is seen by the Åland committees as necessary to the long-term maintenance of Åland's international guarantees of nationality. Åland should thereafter be given the ability to influence the preparation of international agreements so that an unwelcome erosion of the Autonomy Act can be prevented.

The problems with the autonomy's weak position in the implementation of EU legislation is also criticised by the two committees. Despite regulations in the current Autonomy Act, there is little opportunity for the Åland Parliament to influence the preparation of EU legislation within its own areas of competence. This leakage of democracy needs to be rectified, according to the Åland proposals, as well as also guaranteeing Åland a seat in the EU Parliament.

It should also be noted that a change to the Autonomy Act that provides Åland with some form of delegated/limited treaty jurisdiction could advantageously be used in relations with Sweden concerning education, culture and trade.

- *Taxation competence and economic scope for action*

Both of the Åland committees found that the original intention of the taxation forms that were included in the Åland competence was to cover the costs of home rule. They deem it necessary, therefore, that Åland's current taxation competence be developed so that the original intention can be fulfilled.

Taxation competence is in practice closely associated with civil, labour and company law. These legal areas, together with increased taxation competence, provide the necessary prerequisites for a development of the autonomy according to the original ambition of "broadest possible home rule". It would also increase the possibilities to guarantee Swedish as the dominant language within the business sector.

- *Improved language and nationality guarantees*

The Åland proposals for a reform of the Autonomy Act point out that Finland's inability to satisfy the demands for Swedish-language service is in itself a sufficient motive for increased legislative competence. The linguistic service is at the core of the international agreement concerning sovereignty over Åland, and is supposed to function in all situations.

This report has shown that the tendencies to territorial integration, which to varying degrees characterise all modern state formations, will eventually erode not only the

Åland nationality guarantees but also home rule's own scope for action. In the long run, this process can be most effectively counteracted through increased Åland competence within the legal and political areas that are central to societal development.

With reference to the results of this study, it is also recommended that the Autonomy Act is clarified with regard to the protection of language so that laws, regulations, administrative authority decisions and legally binding labour market and wage agreements only apply in Åland if they are in Swedish.

- *Equal legislative control*

The Åland parliamentary committees suggest a more symmetrical legislative control, where the Finnish president can request an opinion from the Åland Delegation concerning the compatibility of a Finnish Parliament law with the Autonomy Act, prior to ratifying the Finnish law.

With reference to this report's criticism of the legislative control's asymmetry, the Supreme Court should be tasked with checking that Finnish Parliamentary legislation does not exceed its competence, as it already does with regard to Åland legislation. That the purpose of home rule constitutes the primary source of law in the legislative control should, moreover, be written into the Autonomy Act as an interpretive directive for the Supreme Court. In this way, home rule would be interpreted independently, based on its own conditions and purpose.

- *Increased role for the Åland Delegation*

The bilaterally appointed Åland Delegation should be given a more comprehensive role, both in legislative issues and, more specifically, in the administrative conflicts that often arise because of mixed competences, thereby promoting trust between the partners in the relationship Åland-Finland.

In Åland's proposal concerning a simplified procedure for the transfer of legal areas to the autonomy (the residual principle), the Åland Delegation could be the body that determines the need for coordination between Finnish and Åland parliamentary laws, and could also suggest concrete amendments. But also in other contexts, the presence of a balanced discriminatory body could prevent conflicts and establish long-term trust. Amongst the autonomies that this report's comparative analyses are based on, South Tyrol is a good example, with its well-functioning, bilaterally appointed legislative commission.

## **From home rule to home management?**

This report's overall conclusion is that the Åland autonomy is in need of a fundamental reform. There is a risk, otherwise, that home rule will stagnate and distance itself from its original purpose of guaranteeing the Swedish language and providing the greatest possible scope for action.

There are no given or internationally accepted norms for what can be considered a fully developed regional autonomy. The comparative international analyses conducted as part of this research project indicate, however, that Åland has some way to go before it can be said to have achieved the original commitment of home rule for Åland that is as far-reaching as possible without exceeding the boundary to state formation. In contrast, the autonomy is stronger concerning the guaranteeing of language; protection of the Swedish language is still a central part of the current Autonomy Act.

However, the problem is that there is, in practice, a connection between the general extent of self-determination and the possibilities to guarantee the autonomy's linguistic and cultural goals, something that has been clearly illustrated in this report. Limited competence in core legal and political areas tends to generate a gradually increasing integration into the overall, Finnish-speaking state structure. The solving of the problem of competence is therefore not only the key to realising the promise of greatest possible home rule, but also to guaranteeing the Åland autonomy's original purpose regarding language and culture.

Despite this, the emphasis of our recommendations as presented above is on the measures that can be implemented today, without a more comprehensive reform of the Autonomy Act. The reason for this is the meagre result of the ongoing Åland attempt to implement a more fundamental reform of the Autonomy Act. It is important to exploit the competences that Åland already has, while waiting for a structural reform that adapts the autonomy's legal competence and scope for action to today's (and tomorrow's) societal development and the needs that this creates.

The analyses that have been conducted in connection with this report lead to the overall conclusion that the time is now ripe for a thorough renewal of the Finnish autonomy arrangement for Åland. Without this sort of fundamental structural reform we risk a process in which Åland's legal and political scope for action is gradually eroded and, accordingly, the autonomy tends to take on the character of home management (Åland management of the legislation imposed by Helsinki) rather than genuine home rule.



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## ABOUT THE FOUNDATION

In the year 1991 the farmer and parliamentarian Olof M. Jansson (1913-2007), from Strömma in Hammarland, established the foundation for the promotion of historical research on Åland, a subject that had, for many years, been of great personal interest. The development of Åland's autonomy, and the spreading of knowledge about this essential chapter of Åland's history, was of equal importance to him, a legacy that the foundation embraces. The financial basis of the foundation was the result of a hard-working life as a farmer combined with a sound economic judgement and finely-tuned instinct for long-term investments.



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